



African Policing Civilian Oversight Forum

NGO observer status no. 372

Statement to the 68th Ordinary Session of the African Commission on Human and Peoples' Rights

ITEM 3: Human Rights Situation in Africa

Honourable Chairperson and Commissioners,

The African Policing Civilian Oversight Forum welcomes the opportunity to make this statement to the 68th Ordinary Session of the African Commission on Human and Peoples' Rights. We are a not-for-profit Trust based in Cape Town, South Africa, working on issues of police accountability and governance in Africa.

At the outset, we extend our sincere condolences to the Commission, family and friends of Honourable Commissioner Ndiame Gaye following his passing. We also extend our condolences in respect of Prof Christof Heyns who worked closely with both the Commission and ourselves over many years and passed away tragically this month. May we continue to honour the memory of their commitment to Human Rights on the continent through our work.

Our statement deals with three issues: the impact of COVID-19 measures on existing commitments to uphold human rights standards; the use of force by South African police in crowd control and management; the use of force by law enforcement officials in Uganda.

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1. The impact of COVID-19 measures on existing commitments to uphold human rights standards.

APCOF remains concerned about the impact of COVID-19 response measures on the exercise of human rights and dignity. More than one year since the outbreak of the pandemic, a significant number of African states continue to impose emergency and extraordinary measures in a manner that is inconsistent with their obligations under the Charter, as well as other international norms and standards on temporary derogation from the obligation to protect and promote human rights.

While domestic and regional legal and human rights framework envisage the adoption and implementation of emergency measures to prevent and combat public health crisis, patterns observed in the enforcement of lockdowns, curfews and other measures, demonstrate the existence of serious human rights challenges in the enforcement of protective measures. In information provided to the Focal Point on Human Rights in Conflict Situations in Africa for the upcoming inter-session activity report, civil society organisations provided information on a number of countries, including South Africa, Nigeria, Sierra Leone, Kenya and Ghana, to name just a few, where preventive measures continue to raise human rights concerns, particularly in relation to arbitrary and excessive use of force by law enforcement officials, the sustained use of custodial means to penalise infringement of COVID-19 regulations and other measures, and the absence of oversight measures over the exercise of broad executive powers.

We encourage the Commission to continue to promote resolution 447 and to develop a normative framework on upholding and maintaining human and peoples' rights during states of emergency and disasters. In particular, we urge the Commission to formulate and articulate principles that will: enhance the understanding of State Parties on general principles of human rights from which no derogation is permitted; prevent arbitrary limitation of human and peoples' rights and promote accountability for unlawful violations of human rights during states of emergency and disaster on the continent; and facilitate the establishment of effective monitoring and oversight mechanisms over the implementation of emergency and protective measures during states of emergency or disaster.

We also call on the Commission to continue its monitoring of State Parties' on their compliance with the African Charter, as interpreted by resolution 449, and to remind State Parties of their responsibility to adopt measures and policies – such as sustained and ongoing investment in capacity building of law enforcement officials to effectively provide aid and assistance in emergencies – that enhance and strengthen their preparedness for public emergencies and crisis, as part of their obligation to adopt legislative and other measures to give effect to the rights guaranteed in the African Charter, as prescribed by article 1 of the Charter.

2. The use of force by South African Police in crowd management

APCOF remains concerned about the use of arbitrary and excessive force by law enforcement officials in South Africa, which we continue to observe in the enforcement of COVID-19 preventive measures. APCOF has previously emphasised to the Commission the existence of legislative and regulatory gaps in relation to the use of force in South Africa, which remain despite the efforts of the Commission, and other role players, to urge reform.

In this regard, we welcome the release in March 2021 of the report of a panel of experts on policing and crowd management – convened on the recommendation of the Marikana Commission of Inquiry – which concludes that the current regulatory framework on the use of force by law enforcement officials is inadequate in various ways. It emphasise that, *inter alia*, one of the key shortcomings of the framework is that it does not clearly articulate the protection of life as a broad guiding principle on the use of lethal force by law enforcement officials.

APCOF welcomes the panel's recommendation that the National Assembly consider the adoption of the *Model Bill for Use of Force by Police and Other Law Enforcement Agencies in South Africa*, to address the legislative deficits in the use of force in general policing as well as the policing of gatherings.

APCOF calls on the Commission to again engage South Africa on the issue of the use of force and recommend legislative reform that will integrate the existing fragmented framework into a coherent and coordinated regulatory regime.

We welcome the Commission's statement on 15th of March 2021 expressing concerns about the use of excessive force by South African Police Service, and calling on South Africa to adopt and implement measures that prevent and combat police use of

excessive force, including through legislative reform. We urge the Commission to encourage South Africa to begin the process of implementing all the recommendations put forward by the Panel – 136 in total, particularly those in relation to the use of force, accountability for arbitrary and excessive use of force, strengthening internal and external monitoring and oversight over policing and use of force, demilitarisation of policing and the training of police officers to effectively facilitate and manage peaceful assemblies and gatherings.

3. Use of excessive force by law enforcement officials in Uganda.

APCOF remains concerned about continued use of excessive force by law enforcement officials in Uganda in the policing of demonstrations and protests. In particular, we note with concern the death of at least 54 protestors on 18 and 19 November 2020.

We urge the Commission to call on Uganda to comply with its obligations to prevent arbitrary deprivation of life by law enforcement officials, and to facilitate peaceful assemblies and gatherings, by adopting and implementing measures that ensure public order policing complies with domestic and regional human rights instruments on peaceful assemblies, including Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, and Resolution 474 on the Prohibition of Excessive Use of Force by Law Enforcement Officers in African States.

We also call on the Commission to encourage Uganda to establish an independent and effective statutory police oversight mechanism to promote accountable and transparent policing practices.

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