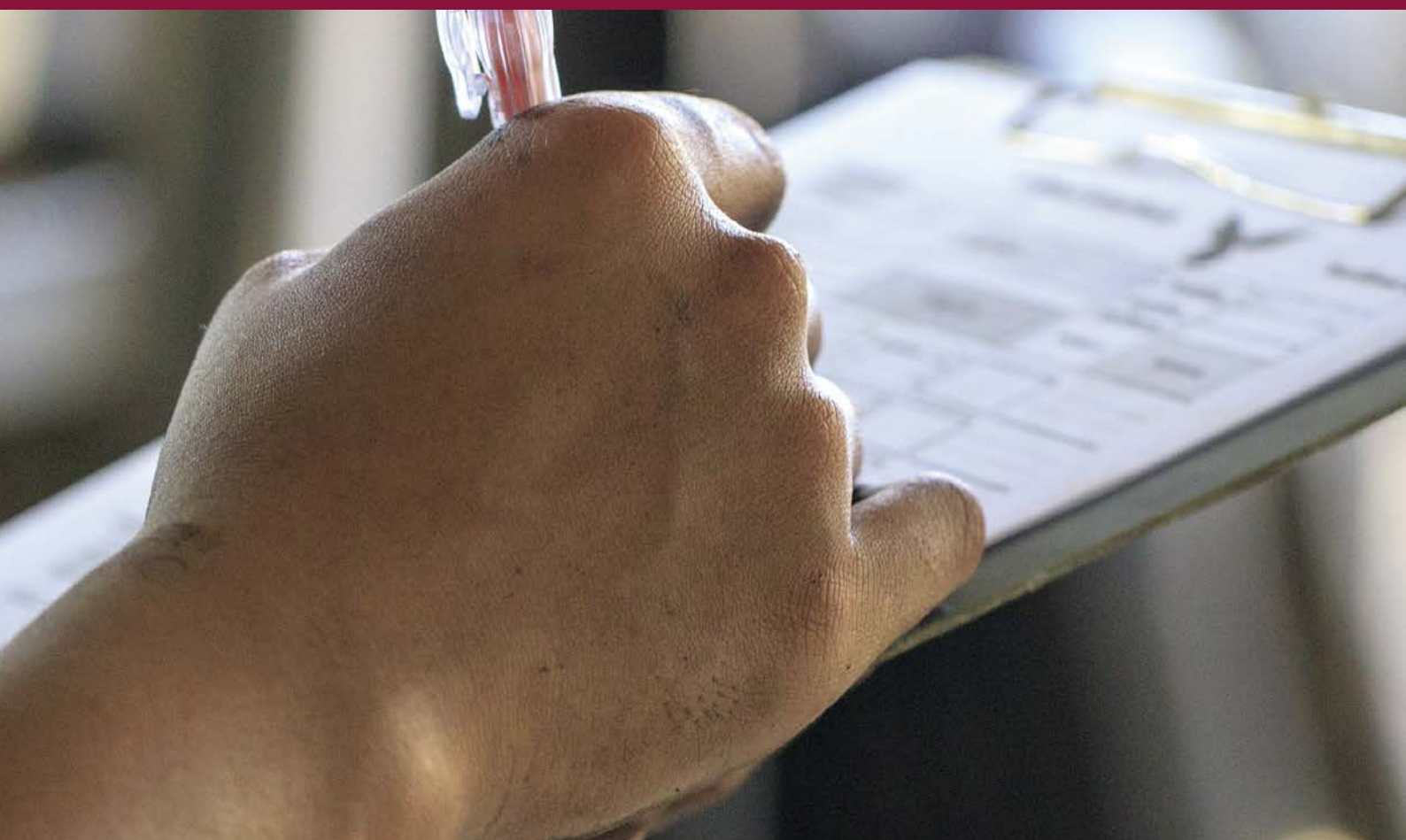


TRACKING AND MONITORING RESOURCE TOOL:

for South African external police oversight
organisations to track and monitor
implementation of recommendations
made to the SAPS regarding
policing xenophobia



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Introduction and background

The South African Police Service (SAPS) is tasked with protecting, and delivering equal services, to all people in South Africa. This includes non-nationals, whether legally in the country or not.

SAPS Standing Operating Procedures makes explicit that:

The South African Police Service ... is responsible for [the] safety and security of all inhabitants of South Africa, including officials or citizens [sic] of foreign countries. Therefore, the South African Police Service has a mandate to protect and serve ... foreign nationals. All foreign nationals [irrespective] of their status [legal or illegal] in the country should be treated with respect and dignity at all times in accordance with the Constitution of the Republic of South Africa.

Non-nationals in South Africa have experienced many incidents of large-scale xenophobic violence. However, they still experience weak policing responses to the violence perpetrated against them.

They are also especially vulnerable to police corruption and do not receive equal policing services as suspects, victims of ordinary crime, or in their ability to access other services, such as document certification, from their local police stations.

This is contrary to the SAPS Code of Conduct.

Beginning in May 2008, large-scale xenophobic violence swept across South Africa. Approximately 100 000 men, women and children were displaced, 30 000 residential properties were destroyed, over 600 people were seriously injured, and 56–60 people were killed or died amid the attacks.¹

Another spate of violence against non-nationals took place again from 2009 to 2013. About 3 000 Zimbabweans were forcibly displaced from the farming region of De Doorns in the Western Cape.² In 2012, 238 incidents were recorded by the UNHCR with 120 deaths and 7 500 persons displaced.³ In 2013, an estimated 62 migrants were murdered in South Africa during the first six months of 2013 and around 130 separate episodes of attacks on foreign migrants were reported. This resulted in the displacement of some 5 000 persons and left 73 persons seriously wounded.⁴

1 Crush J & Ramachandran S (2014). *Xenophobic violence in South Africa: denialism, minimalism, realism*. Southern African Migration Programme (SAMP). International Migration Research Centre (IMRC). Migration Series, 66.

2 Ibid.

3 Ibid.

4 Ibid.

An intensification of xenophobic violence in 2015 (with 63 deaths and close to 500 persons displaced) resulted in the government responding with the establishment of the SAPS-Led Operation Fiela-Reclaim, which sought to stabilise areas affected by violence and concentrate efforts to arrest undocumented migrants. There was a further spike in xenophobic violence incidents in 2019, increasing again in 2021 and 2022.⁵

South African Human Rights Commission recommendations to the South African Police Service for implementation

The SAPS needs to carry out its policing within a human rights framework generally, including with regard to the fair treatment of non-nationals and the combatting of xenophobic violence.

The SAHRC has carried out multiple activities, investigations, mediations and hearings in respect of issues relating to xenophobia, migration and policing and, in 2010, produced 21 specific recommendations. The full list of recommendations appears in the Appendix.

The need for a tool to track and monitor recommendations

Recommendations are by definition ‘before-the-fact’ oversight. They speak to the reform or creation of laws, policies and procedures, new training curricula, setting up systems, and forming partnerships, to name but a few areas.

‘After-the-fact’ oversight, in contrast, seeks to monitor and track progress and deficits in the implementation of recommendations.

This document serves as a *resource tool* to assist oversight bodies to gauge the SAPS’s implementation of these recommendations. Having a monitoring and tracking tool will help police oversight bodies to hold the SAPS accountable for implementation.

5 Xenowatch dashboard. URL <http://www.xenowatch.ac.za/statistics-dashboard/> (accessed 11.11.22).

The purpose of this monitoring and tracking tool

This tool provides a means for oversight organisations to track the SAPS's implementation of some of the recommendations made by the SAHRC and other bodies.

It aims to assist oversight bodies to identify the SAPS's deficits and progress in:

- * Preventing xenophobic violence.
- * Responding to xenophobic violence.
- * Delivering equal service to non-nationals.

Using the data collected through this resource tool, the SAHRC and other oversight organisations will be in a stronger position to hold the SAPS accountable for implementation of the recommendations.

The better that the SAPS is able to address xenophobic incidents and is able to police within a human rights framework, the more likely the conditions for peaceful co-living in South Africa.

Who could use this tool

We hope that this resource tool will prove useful to external police oversight bodies such as:

The South African Human Rights Commission (SAHRC)	Has extensive powers to ensure that the SAPS adheres to human rights-focused policing, and has been making recommendations to the SAPS since 2010 on addressing xenophobia.
The Civilian Secretariat for Police Service (CSPS)	Provides the Minister of Police with advice on ensuring civilian oversight over the SAPS through monitoring and evaluating overall police performance, including compliance with policy.
The Independent Police Investigative Directorate (IPID)	Was established to promote police accountability through investigations into conduct by the SAPS and municipal police services. It has the power to investigate systemic police actions.
Relevant committees of the national and provincial legislatures	Safety and security portfolio committees at national and provincial levels are tasked with oversight of the CSPS and IPID.
Members of civil society gathering data for possible litigation against the police for xenophobic-related incidents	

How oversight bodies can use this tool

The tool is not intended to be prescriptive in any way. Nor is it intended that it be used in a consistent or regimented manner, for example quarterly or annually.

Rather, organisations are encouraged to *extract what is useful* to them in order to track the SAPS's engagement with xenophobic issues.

The SAHRC's list of recommendations to the SAPS in 2010 contained 21 points. We have, however, not included all the recommendations.

Rather, we have grouped common recommendations into themes. The themes are:

1

Need for more training and resource allocation to address xenophobic violence,

i.e. provide training to promote compliance with legislative frameworks and improve attitudes to non-nationals

2

Need for coherent, local guidelines for addressing the negative consequences of xenophobia

i.e. establish an overarching SAPS policy on xenophobia, violence and related hate crimes

3

Need for improved results-based management and monitoring

i.e. improve data collection on xenophobic violence and related hate crimes

4

Need to engage with the local community in addressing xenophobia

i.e. engage in community outreach with non-national communities and South Africans on issues of service delivery, xenophobia and related hate crimes

Mandates of external oversight organisations

South African Human Rights Commission (SAHRC)

The SAHRC is South Africa's statutory, national human rights institution.

It has a broad mandate to:

- * Investigate and report on the observance of human rights.
- * Take steps to secure appropriate redress where human rights have been violated.
- * Carry out research and investigations.
- * Conduct education programmes.

The SAHRC signed a Memorandum of Understanding (MoU) with the SAPS in 2015, and again in 2017, and a further MoU is under discussion.

Areas of oversight of interest to the SAHRC include:

- * The review and development of training curricula for officers of the SAPS.
- * The review of policy pertaining to the protection of human rights.
- * Democratic policing within a human rights framework.
- * Outreach activities to create awareness in communities and within the SAPS on policing issues pertaining to human rights.

Civilian Secretariat for Police Service (CSPS)

The CSPS is tasked with providing civilian oversight over the SAPS through monitoring and evaluating overall police performance, including compliance with policy. In terms of promoting non-discrimination against non-nationals, it launched a civilian campaign called 'We Are One Humanity' with the SAPS in 2015. The campaign aimed at promoting diversity and changing xenophobic attitudes.

No specific data exists as to the success of the CSPS's campaign. Tracking questions related to policing in communities would assist the CSPS to fulfil its oversight function.

Independent Police Investigative Directorate (IPID)

IPID is empowered to investigate systemic corruption on behalf of the SAPS.⁶ To date, IPID has mostly focused on individual investigations into complaints against the police and has not investigated police corruption regarding non-nationals as a systemic issue. This may be partly because there is no mandatory requirement that the nationalities of complainants be recorded. Other data collection would enable IPID to carry out its oversight role regarding police abuse of non-nationals.

Portfolio committees on safety and security and police

The Portfolio Committee on Police is responsible for conducting oversight over the Minister of Police and the following departments:

- * The SAPS
- * The CSP
- * IPID
- * The Private Security Industry Regulating Authority (PSIRA)
- * The Directorate for Priority Crime Investigation (DPCI), commonly known as the 'Hawks', which reports to the Minister of Police

These five entities are required by law to report to the Portfolio Committee on their annual budget, their five-year strategic plan, their annual performance plan, their quarterly financial reports and their annual report. The Portfolio Committee, in turn, reports to Parliament on its findings and recommendations.

In conducting oversight, the Portfolio Committee relies on information received from the very body that it must oversee. The result is that the body under scrutiny has the power to influence the type and quality of information it provides to the Committee. The Committee's ability to verify the accuracy of the information is made difficult by issues of access and capacity.

The indices contained in this tool could assist the various committees concerned to monitor and track specific areas of oversight.

Civilian oversight

There are a number of civil society organisations in South Africa that conduct civilian oversight of the police. These entities could use the tracking indices contained in the resource tool consistently in order to report on areas of interest.

6 Section 28(1)(g) of the IPID Act 1 of 2011.

Specific indices to track recommendations

The 2010 Report by the SAHRC made the following recommendations to the SAPS. (The full list is in the Appendix). We have categorised them according to theme, and have also disaggregated them into practical indices.

**Theme 1:
Training and resource allocation to address xenophobic violence**

Adequate training of incoming and in-service police officers has been identified as a crucial area to build the SAPS’s capacity.

General improvement efforts

<i>What general efforts have been made by the SAPS to provide improved policing services regarding xenophobic violence?</i>				
	In 2022	In 2023	In 2024	In 2025
Conducted skills needs analyses to identify specific deficits				
Partnerships with non-governmental organisations (NGOs) and others including entering into service level agreements				
Other/comments				

Specific skills recruited existing or in partnerships with the SAPS

<i>In order to improve service delivery to non-nationals, which of these specific skills has the SAPS recruited or formed partnerships with?</i>				
	In 2022	In 2023	In 2024	In 2025
Conducted skills needs analyses to identify specific deficits				
Interpreters in languages spoken by non-nationals				
Counsellors or counselling services				
Specialists in asylum granting and immigration				

Recruitment of police officers per province

<i>Officers recruited per province to deal specifically with xenophobic violence?</i>				
	In 2022	In 2023	In 2024	In 2025
Eastern Cape				
Free State				
Gauteng				
KwaZulu-Natal				
Limpopo				
Mpumalanga				
Northern Cape				
North West				
Western Cape				

Training

Police officers should receive substantial and targeted training related to xenophobia during the induction period and while in service.

Basic training

<i>To what extent has the basic training curriculum been amended to include specific modules on combatting xenophobia?</i>				
	In 2022	In 2023	In 2024	In 2025
Not at all				
New sections are in the planning phases				
New sections have been included				
Participants have received training				
Comment				

In-service training

<i>To what extent has the SAPS ensured that in-service police officers participate in training regarding xenophobia?</i>				
	In 2022	In 2023	In 2024	In 2025
Not at all				
Lectures				
One workshop or training				
Two to three workshops or courses				
Comment				

Curriculum content

Better knowledge of the content of the laws and policies pertaining to non-nationals should be included in training curricula. Also, curricula should allow the police to explore the prejudicial societal attitudes that non-nationals often experience.

<i>Are these issues covered in the training?</i>				
	In 2022	In 2023	In 2024	In 2025
The legislative frameworks that govern immigration and asylum in South Africa, including the SAPS Standing Orders and Code of Conduct				
Policing within a framework of non-discrimination and acceptance of ethnic and other types of diversity				
Profiling, under-policing, over-policing and unconscious bias				
The difficulties and traumas non-nationals experience and the need for compassion and empathy				

Stop and search, arrest and detention of illegal immigrants

Police officers may not be aware or may need to be reminded of the limits of their legal powers in relation to stop, search and arrest. The points below are particularly important for SAPS members to know.

<i>Are these specific legal points related to non-nationals covered in the training?</i>				
	In 2022	In 2023	In 2024	In 2025
Being in South Africa without valid papers is not a criminal offence. It is an administrative offence that must be dealt with by the Department of Home Affairs.				
The police may not stop and ask someone for their documentation unless there is a reasonable suspicion that they do not have valid papers.⁷ Random stop and search is not allowed.				
Police officers have a discretion to arrest or not to arrest an illegal non-national. In other words, they are not obliged to arrest them. Importantly, the police officer must always favour the individual's freedom over their detention.⁸				
If an officer detains an illegal non-national, they may only do so for 48 hours. During those 48 hours, the officer must take 'reasonable steps' to: <ul style="list-style-type: none"> • investigate <i>and</i> • access relevant documents that may be readily available Or <ul style="list-style-type: none"> • contact relatives or other persons who could prove their identity and status <i>and</i> • access departmental records to this effect 				

7 Hansraj P & Moyo F (2016) When can the police detain you for not showing documents? Many immigrants are detained arbitrarily. *Groundup: online*. Available at <https://www.groundup.org.za/article/when-can-police-detain-you-not-showing-documents/> [accessed 22 February 2023].

8 South African Human Rights Commission and Others v Minister of Home Affairs: Naledi Pandor and Others (41571/12) [2014] ZAGPJHC 198; 2014 (11) BCLR 1352 (GJ); [2014] 4 All SA 482 (GJ) (28 August 2014).

Resources

Dedicated and adequate resources for policing xenophobia would assist the SAPS to carry out their duties.

<i>To what extent has the SAPS budgeted for specialised training and deployment of police officers dealing with xenophobic incidents?</i>				
	In 2022	In 2023	In 2024	In 2025
No budget				
Inadequate budget (Explain why)				
Reasonably adequate budget (Explain why)				
Comments				

Theme 2: Developing coherent, local guidelines for addressing the negative consequences of xenophobia

Establishing an overarching SAPS policy on xenophobia, violence and related hate crimes, that aligns with the National Action Plan, is required.

Development of policy

<i>To what extent has the SAPS developed a policy on the policing of non-nationals and on xenophobic violence and related hate crimes?</i>				
	In 2022	In 2023	In 2024	In 2025
We haven't started yet				
We've started consultations				
We're in the drafting phase				
We've completed it				

Alignment with the National Action Plan

<i>Does this new policy include these objectives of the National Action Plan?</i>				
	In 2022	In 2023	In 2024	In 2025
A focus on evidence-based research				
A focus on early warning				
A focus on community outreach				

Cooperation and contingency planning with the South African National Defence Force (SANDF)

<i>To what extent has the SAPS been cooperating with the SANDF to prevent and contain xenophobic incidents?</i>				
	In 2022	In 2023	In 2024	In 2025
No discussions as yet				
In discussion but no agreements				
MoU created				
We have cooperated in the specific incidents listed below				

Theme 3: The need for improved results-based management and monitoring

The SAPS needs to improve its data collection in respect of xenophobic violence and related hate crimes.

Evidence gathering

Currently, there is no specific requirement for the police to record the nationality of people against whom crimes have been committed. This means that it is difficult to track systematic incidents of xenophobia.

<i>To what extent has the SAPS made forms and databases sufficiently effective and standardised to allow for specific tracking of xenophobic crimes?</i>				
	In 2022	In 2023	In 2024	In 2025
No upgrades				
We are in the process of upgrading				
We have made changes but the systems are not yet fully efficient or standardised				
We are able to track and report xenophobic-related data through an efficient and standardised system				
Comments				

Inclusion of nationality data

<i>How, specifically, has the SAPS made the collection of data more efficient and standardised in order to allow for specific tracking of xenophobic crimes?</i>				
	In 2022	In 2023	In 2024	In 2025
No upgrades				
Column added in forms for nationality				
Data system upgraded to include nationality				
Data is able to identify individual and systemic xenophobic crimes				
Comments				

Equal treatment at police stations

Non-nationals frequently report hostility and corruption by police when trying to report crimes or obtain documents.

<i>To what extent have police stations been monitored to identify discriminatory/ equal treatment of non-nationals?</i>				
	In 2022	In 2023	In 2024	In 2025
No stations monitored				
Policy of regular monitoring of police stations is in the planning stage				
Police stations are being regularly monitored				
Reporting mechanisms on treatment of non-nationals at police stations are operational				
Comments				

Specific use of resources external to the police

<i>What specific measures have been taken by the SAPS to prevent and monitor mass incidents of xenophobic violence?</i>				
	In 2022	In 2023	In 2024	In 2025
Reviewing of media footage of incidents to identify triggers and perpetrators				
Created intelligence networks to allow for early warning				
Created partnerships on the ground to warn of impending violence				
Co-ordination between various state security organisations				
Comments				

Theme 4:
The need to engage with the local community in addressing xenophobia

Attitudinal change within the police service as well as in communities towards non-nationals requires consistent interventions.

Means of engagement

<i>To what extent has the SAPS tried to engage the community in non-discriminatory policing?</i>				
	In 2022	In 2023	In 2024	In 2025
Posters in police stations				
Flyers or other printed media				
Use of radio, TV, social media				
Speaking at community events				
Comments				

Measuring public perception

<i>To what extent has the SAPS measured whether the public perceives it as policing informal settlements sensitively?</i>				
	In 2022	In 2023	In 2024	In 2025
Not at all				
Occasional surveys				
Regular temperature-taking				
Comments				

Appendix

SAHRC 2010 Recommendations to the SAPS

The SAHRC, in 2010, addressed a comprehensive list of recommendations to the SAPS which drew on the investigations into the incidents that occurred in 2008. These recommendations read as follows:

1. Establish a national task team of police to compile a documentary record of institutional learning during and after the May 2008 attacks in consultation with affected stations and provincial offices. This should form the basis of relevant training or guidelines, which should be rolled out to all affected stations, prioritising those stations which have experienced violence against non-nationals on more than one occasion. It should also inform the recommended engagement between [the] SAPS and the SANDF on guidelines for future cooperation in the case of a social conflict disaster.
2. Revisit the standing orders and operational protocols currently used in the policing of social conflict in light of the findings of this report and the experience of the station and provincial-level police.
3. Together with the SANDF, draw up best practice guidelines (as envisioned by the Defence Act of 2002) for reference in the event of a future request for cooperative service in conditions of civic violence. Establish an incident profile of the scale and nature of the incident that will in the future merit a cooperative service response. A recommended departure point would be for the deployment of the SANDF to be immediately requested, and the pre-prepared guidelines activated, where the available resources are inadequate to protect both life and property or where backup to the initially affected area is depleted, for instance by the outbreak of violence in a second locality.
4. Boost the visibility of policing following an outbreak of social conflict by immediately and simultaneously deploying all available backup units.
5. Require provincial police offices to produce contingency plans for a full range of social conflict scenarios, supported by inter-provincial communication and debate.
6. Together with the NPA [National Prosecuting Authority], compile an evaluation of the 2008 joint agreement on xenophobia-related cases and the challenges in its implementation, providing concrete recommendations to minimise the weaknesses and promote the strengths of the response in case of a similar situation arising in the future.

7. Together with [the] DoJCD [Department of Justice and Constitutional Development], draw up a set of best practice guidelines that in the case of a future scenario would make the best and most efficient use of resources in the judicial system.
8. In future, reinforce opposition to bail in court with the possibility of intimidation of witnesses and complainants and the threat this poses to the course of justice.
9. In relation to the national police desk on crimes against non-nationals, continually review the information collation mechanisms feeding this early warning system, to ensure ongoing improvements.
10. Partner with [the] DHA [Department of Home Affairs] and Disaster Management in responding to early warning information or patterns of crimes against non-nationals.
11. Ensure that the national police desk on crimes against non-nationals is party to the programme of targeted conflict resolution initiatives to be implemented by a department nominated by the social cluster.
12. Ensure that the criteria for reportable instances of xenophobia are standardised and consider future oversight by the Monitoring and Evaluation Directorate of the Civilian Secretariat for Police Service.
13. If it is necessary to carry out immigration policing in informal settlements, do so sensitively in order not to exacerbate social tensions or alienate non-nationals from the justice system in these areas.
14. Ensure that sporadic prejudice-related crimes against non-national individuals, and opportunistic crimes exploiting the marginal position occupied by nonnationals, receive adequate focus and judicial response.
15. Partner with DoJCD, Metro Police, the Civilian Secretariat of Police and the Independent Complaints Directorate (ICD) [now IPID] to develop a community-based campaign to promote the justice system.
16. Partner with the Provincial Departments of Community Safety to investigate the circumstances under which CPFs [Community Police Forums] cease to function in informal settlement areas.
17. Support the establishment of satellite police stations in informal areas, prioritising areas where these are specifically requested, and areas at risk of public violence.
18. Together with Departments of Community Safety, facilitate neighbourhood watch campaigns and hotlines to local police in order to protect deserted informal homes in the wake of any displacement.

19. Consider ways of using media footage to assist in investigations of social conflicts that are covered by the media.
20. Ensure training in matters pertaining to hate crimes once such legislation is put in place.
21. Review SAPS record keeping and related information systems and plan improvements.

About this report

The African Policing Civilian Oversight Forum (APCOF) is funded by the European Union (EU) in order to support the development of the South African Police Service's (SAPS) capacity to detect and prevent, and respond to, xenophobic violence and related hate crimes. The present project is set against the backdrop of numerous incidents of xenophobic violence and hate crimes directed, since 2008, at non-nationals and other persons marginalised on the basis of their national origin who reside in the Republic of South Africa.

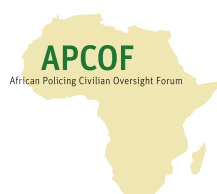
The persistence of xenophobic violence and hate crime in South Africa raises critical questions regarding the ability of external oversight institutions – the South African Human Rights Commission (SAHRC), the Independent Police Investigative Directorate (IPID), and the Civilian Secretariat of Police Service (CSPS) – to keep the mandate holders to account. This document is a resource tool to assist oversight bodies to gauge the SAPS's implementation of these recommendations. Having a monitoring and tracking tool will help police oversight bodies to hold the SAPS accountable for implementation.

The South African Human Rights Commission

The South African Human Rights Commission is the national institution established to support constitutional democracy. It is committed to promoting respect for, observance of and protection of human rights for everyone without fear or favour.

The African Policing Civilian Oversight Forum

The African Policing Civilian Oversight Forum (APCOF) is a not-for-profit trust working on issues of police accountability and governance in Africa. APCOF promotes the values which the establishment of civilian oversight seeks to achieve, namely: to assist in restoring public confidence; developing a culture of human rights, promoting integrity and transparency within the police; and good working relationships between the police and the community. While APCOF is active in the field of policing, its work is located in the broader paradigm of promoting democratic governance and the rule of law.



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