



# African Policing Civilian Oversight Forum

**STAKEHOLDER SUBMISSION  
TO THE HUMAN RIGHTS COMMITTEE - SOUTH AFRICA- UNIVERSAL PERIODIC  
REVIEW, 27<sup>TH</sup> SESSION, 3<sup>RD</sup> CYCLE (2017)**

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**Submitted by:**

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## 1. Introduction

APCOF is a Not-for-Profit Trust working on issues of police accountability and governance in Africa. APCOF aims to advance the values civilian oversight of the police seeks to achieve, namely: to assist in restoring public confidence in the police; to develop a culture of human rights; to promote integrity and transparency within the police; and to foster 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.

## 2. APCOF Submission to the South Africa's 3<sup>rd</sup> Universal Periodic Review (UPR)

The UNHRC made several recommendations to South Africa during its 2012 review relating to the criminal justice sector, including, the Immediate ratification of the Optional Protocol to the Convention Against Torture (OPCAT); the Enactment of legislation criminalising acts of torture and successful prosecution thereunder; Strengthening efforts to combat xenophobia; and Increasing training of law enforcement officials on human rights principles and practices.<sup>1</sup> In response to the progress made in South Africa since the 2012 UPR, APCOF makes the following submission.

### 2.1 Enactment of legislation criminalising acts of torture

APCOF welcomes the enactment by South Africa of the Prevention of Combating and Torture of Persons Act 13 of 2013. APCOF commends South Africa for adopting legislation that conforms to international standards in its definition of torture and its provisions for the prosecution and punishment of perpetrators of torture.

APCOF notes with concern, however, the low number of prosecutions against law enforcement officials in terms of the legislation. According to research conducted by the Civil Society Prison Reform Initiative (CSPRI) in 2013, perpetrators of human rights violations act with *de facto* impunity because challenges in implementation of oversight inevitably results in low levels of prosecution.<sup>2</sup> In 2014/2015 the Independent Police Investigative Directorate (IPIID) made 983 criminal recommendations to the National Prosecuting Authority (NPA); 52 were prosecuted by the NPA, but only 1 resulted in a conviction. Of the remaining 930 recommendations, the NPA declined to prosecute 162, requested more information on 3, and failed to respond to the remaining 765.<sup>3</sup> The low number of successful prosecutions is especially concerning given that allegations of torture, for example those perpetrated by the South African Police Service (SAPS),

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<sup>1</sup> United Nations Human Rights Council (UNHRC), Report of the Working Group on the Universal Periodic Review: South Africa, 9 July 2012, A/HRC/21/16. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/151/29/PDF/G1215129.pdf?OpenElement>. <Accessed on 22 September 2016>.

<sup>2</sup> Muntingh, L., and Dereymaker, G. (2013). *Understanding impunity in the South African law enforcement agencies*, at 6. Civil Society Prison Report Initiatives (CSPRI), Community Law Centre at University of the Western Cape. Available at: <http://cspri.org.za/publications/research-reports/understanding-impunity-in-the-south-african-law-enforcement-agencies>. <Accessed on 22 September 2016>.

<sup>3</sup> Independent Police Investigative Directorate (2015). *Annual Report for the 2014/2015 Financial Year Vote 20*, p 79. Available at: [http://www.icd.gov.za/sites/default/files/documents/IPIID\\_Annual\\_Report%202014-15.pdf](http://www.icd.gov.za/sites/default/files/documents/IPIID_Annual_Report%202014-15.pdf) <Accessed on 19 September 2016> [Herein referred to as 'IPIID Annual Report 2014/2015'].

have risen since South Africa's second UPR. IPID reported 78 allegations of torture in 2013/2014 and 145 incidents in 2014/2015, an increase of 86%.<sup>4</sup>

APCOF appeals to the UNHRC to encourage South Africa to continue to build and strengthen the capacity of the Independent Police Investigative Directorate (IPID), the Judicial Inspectorate of Correctional Services (JICS), and the National Prosecuting Authority (NPA) to ensure all allegations of torture are investigated in a timely and comprehensive manner, that perpetrators of torture are prosecuted under the Act, and that victims gain access to support services and are awarded appropriate redress in terms of the Act.

## 2.2. Ratification of the Optional-Protocol on the Convention Against Torture (OPCAT)

APCOF remains concerned that South Africa has not ratified OPCAT and specifically is concerned by the absence of regular and systemic independent monitoring of all places of detention. The Judicial Inspectorate for Correctional Services conducts inspections of detention facilities under the mandate of the Department of Correctional Services. However there is no the regularized and independent monitoring of police cells, under the management of the South African Police Services, Child and Youth Care Centers (CYCCs) under the management of the Department of Social Development (DSD), mental health treatment facilities under the management of the Department of Health, and Repatriation Centers under the management of the Department of Home Affairs.

APCOF appeals to the UNHRC to urge South Africa to take immediate steps to ratify OPCAT and to establish a comprehensive system of oversight and monitoring of all places of detention.

## 2.3. Strengthen efforts to combat xenophobia

APCOF acknowledges efforts by South Africa to develop more effective responses to xenophobic violence. APCOF, however, remains concerned by the ongoing incidents of violence against non-nationals and the continued occurrence of problematic police responses. A recent report by the UN High Commission on Refugees (UNHCR) in 2015 found that SAPS is 'quick to dismiss attacks on foreign nationals' as lacking xenophobic intent and being merely criminal, which not only limits SAPS's ability to detect xenophobic motives, but also limits its effectiveness in holding perpetrators to account.<sup>5</sup> Further, UNHCR's report described policing responses to violence against non-nationals as 'actively hostile and complicit', which the police have claimed is the result of having limited capacity and being fearful of victimization in the communities where they serve.

APCOF appeals to the UNHRC to recommend to South Africa that it take additional measures to

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<sup>4</sup> IPID Annual Report 2014/2015 at 42.

<sup>5</sup> Misago, J.P et al. (2015) *Protection from Xenophobia: Evaluation of UNHCR's Regional Office for Southern Africa's Xenophobia Related Programmes*, at 28, quoting Amnesty International, 2010; Landau and Hai thar, 2007, The African Centre for Migration and Society, University of Witwatersrand.

strengthen policing response xenophobic violence by implementing the recommendations set forth in the SAHRC's 2008 investigation into public violence against non-nationals<sup>6</sup>, which includes: (1) establishing a national task team of police to document, analyse and understand policing responses to the violence with a view to improving systems and training; (2) developing early warning systems as part of police detection systems; and (3) review policies and procedures in relation to the policing of non-nationals for purposes of building trust and confidence between migrant communities and the South African Police Service.<sup>7</sup> Further, APCOF appeals to the UNHRC to recommend to South Africa that it ensures its 2016 White Paper on Safety and Security, which identifies non-nationals as a vulnerable group and acknowledges the prevalence of violence against them, becomes fully operational in order to address the underlying causes of violence and to promote an integrated and developmental response to xenophobia.

#### 2.4. Increase human rights training of law enforcement personnel

APCOF recognizes efforts by South Africa to increase the human rights training of law enforcement officials, specifically with the establishment of human rights education and training programmes. APCOF, however, remains concerned by the continued human rights violations perpetrated by both commission and omission by law enforcement officials. The Khayelitsha Commission of Inquiry revealed that prejudicial attitudes and stereotypes held by individual officers against lesbian, gay, bisexual, transgender and intersex (LGBTI) persons influence the way in which police 'police' crimes against members of this community, despite having been trained on human rights principles and practices.<sup>8</sup>

APCOF appeals to the UNHRC to encourage South Africa continue to continue and increase its investment in the promotion of human rights training and education programmes. Further APCOF appeals to the UNHRC to recommend to South Africa to immediately review and amend the SAPS Code of Conduct to include professional standards for police conduct as provided in the National Development Plan; to establish a Code of Ethics that reflects the values that must inform the functions of law enforcement officials; and to integrate both the Code of Conduct and the Conduct of Ethics into disciplinary procedures and performance management assessments.

#### 2.5. Review and amend the legislative framework governing use of force

South Africa's legislative framework governing use of force by law enforcement officials does not conform to international law. Section 49 of the Criminal Procedure Act 51 of 1977 currently permits the use of **lethal force** against a person who is *suspected of* committing a crime involving an actual or attempted infliction of serious bodily harm without posing an **imminent** threat of

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<sup>6</sup> South African Human Rights Commission (2010). *Report on the SAHRC Investigation into Issues of Rule of Law, Justice and Impunity arising out of the 2008 public violence against non-nationals* at 17, Johannesburg: South African Human Rights Commission. See also: *FSaid and others v The Minister of Safety and Security and others* (EC13/08), unreported judgment handed down on 7 December 2011. [Herein referred to as 'SAHRC Investigation Report on Xenophobic Violence 2008'].

<sup>7</sup> SAHRC Investigation Report on Xenophobic Violence 2008, at 17.

<sup>8</sup> Underhill, G. (31 January 2014). 'Khayelitsha police 'incapable of helping LGBT residents'. Available at: <http://mg.co.za/article/2014-01-30-khayelitsha-police-incapable-of-helping-lgbt-residents>. <Accessed on 19 September 2016>.

death or serious bodily harm. Given the concerning levels of death as a result of police action, with a total of 1 217 deaths resulting from police action since 2012<sup>9</sup>, it is critical that South Africa to take all necessary measures to strengthen the legal framework for the use of force, and to ensure that law enforcement officials are provided with training and support to exercise their powers in accordance with the law.

APCOF appeals to the UNHRC to recommend to South Africa to review and amend all provisions in law and regulation regarding the use of force to ensure its compliance with international norms and standards, specifically in relation to the use of lethal force.

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<sup>9</sup> IPID Annual Report 2014/2015, at 43.