

**Statement to the 56th Ordinary Session of the African Commission on Human and Peoples' Rights
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Policing and Xenophobic Violence in South Africa

Prepared by the African Policing Civilian Oversight Forum (APCOF)

The African Policing Civilian Oversight Forum is active in promoting police reform through strengthening civilian oversight over the police in Africa. APCOF takes the view that strong and effective civilian oversight assists in restoring public confidence in the police; promote a culture of human rights, integrity and transparency within the police; and strengthens working relationships between the police and the community.

At a time when the world is focused on the suffering of refugees and migrants fleeing war and hardship, the recent attacks against migrants and refugees in South Africa is particularly concerning. While many areas of South Africa's immigration and refugee system require focused attention to ensure it is rights-compliant, APCOF is particularly concerned about the policing responses to the recent attacks by South Africans against non-nationals living in South Africa.

The African Charter on Human and Peoples' Rights, as well as South Africa's other international obligations stemming from the Universal Declaration on Human Rights, require South Africa to respect and promote the human rights of all persons within its borders, regardless of their national or social origin. South Africa has a legal and moral obligation to take action to protect and promote the rights of all non-nationals within its territory, and this includes in relation to the role of the police in not only responding to violent attacks, but addressing the underlying causes of the violence.

In 2008, similar attacks were the subject of research and reports by the South African Human Rights Commission and civil society, and a decision by the High Court of the Western Cape. The recommendations made by these stakeholders in 2008 included a strong policing, within the context of a holistic approach to not only addressing the violence as it occurs, but to understanding and addressing the underlying causes of the violence, and establishing early warning mechanisms.

In relation to the role of the police, the South African Constitution requires that the South African Police Service exercise their mandate and powers in a manner that is consistent with the bill of rights, including the right to equality. Research into the 2008 xenophobic violence revealed distrust between non-national communities and the police, that non-nationals are marginalized to the extent that they can be prevented from receiving protection from police during times of violence, and that the police failed to protect their property. The response by the South African Police Service to misconduct and abuse by its members has not resulted in disciplinary measures, and the right to an effective remedy by non-nationals has not been realized.

The South African Human Rights Commission, amongst other stakeholders, recommended that the South African Government develop and implement integrated national and provincial level plans to address national responses to such social conflict and violence.

Recommendations specific to the role of the police in violence against non-nationals included the establishment of a national task team to document, analyse and understand policing responses to the violence with a view to improving systems and training; to develop early warning systems; and to review policies and procedures in relation to the policing of non-national persons and communities to build trust and confidence between this marginalized community and the national police service.

APCOF regrets that the South African Government has failed to fully implement these recommendations. APCOF is further concerned by the deployment of the South African National Defence Force into policing functions in response to the attacks. The deployment of the military is an extreme action that blurs the separation of powers, and is testimony to the failure of a civilian policing response.

We call on the African Commission on Human and Peoples' Rights to request a comprehensive update from the South African Government about steps it is taking to ensure the rights to life and equality for non-nationals living in South Africa. APCOF further calls on the South African Government to invite Commissioner Med S.K. Kagwa to visit South Africa on a fact finding mission.

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