



African Policing Civilian Oversight Forum

25 November 2022

Dr. Alice Edwards
UN Special Rapporteur on Torture
Office of the UN High Commissioner for Human Rights
United Nations Office at Geneva
Switzerland

By Email: hrc-sr-torture@un.org

Dear Dr. Edwards,

Input to the Report of the Special Rapporteur

The African Policing Civilian Oversight Forum (APCOF) welcomes this opportunity to provide information to the UN Special Rapporteur on Torture in the preparation of a report on the duty to investigate crimes of torture in national law and practice. APCOF is a not-for-profit Trust based in Cape Town, South Africa, that works across the African continent on issues of police governance and accountability.

Our submission draws the attention of the Special Rapporteur to research conducted by APCOF into the capacity and effectiveness of investigations into police misconduct and criminality (including torture) by South Africa's Independent Police Investigative Directorate. The report, '[Are South Africa's Cops Accountable? Results of Independent Police Investigative Directorate Investigations](#)' provides a quantitative and qualitative analysis of the adequacy of IPID investigations.

IPID is an independent civilian oversight body tasked with investigating cases involving members of the South African Police Service (SAPS) and the six municipal police services (MPS). Section 28(1)(f) of the IPID Act requires that IPID investigate 'any complaints of torture or assault against a police officer in the execution of his or her duties'. Torture is an offence under South African law, pursuant to the [Prevention and combating of Torture of](#)

African Policing Civilian Oversight Forum

Building 23B, Suite 16, Waverley Business Park, Wycroft Road, Mowbray, Cape Town, 7925

PostNet Suite 63 Private Bag x11, Mowbray, 7705

Tel: +27 21 447 2415

www.apcof.org.za

Trust no. IT1900/2012

PBO 930041858, NPO 119 688- NPO

Trustees: T Gandidze (Chair), G Cronje (Treasurer), P Tlakula, E van der Spuy, A Van Wyk, S Africa

[Persons Act](#) (2013).

The report focuses on the completion and finalisation of investigations by IPID, and includes examination of the legislation and regulations relevant to the conclusion of investigations, and links this to an analysis of IPID data on the completion of investigations.

Some of the key issues highlighted in the report that may be of interest to the Special Rapporteur in the preparation of the report, include:

- Amongst the impediments to effective investigations and prosecutions of acts of torture, IPID prioritises the completion of investigations over the need demonstrate IPID's impact on police conduct. IPID should not only focus on increasing the rates of criminal and disciplinary convictions as a result of investigations, but it must also focus on ensuring that its investigative performance is enhanced in relation to the most serious manifestations of police criminality, which includes torture. This requires a system for case screening which is intended to contribute to ensuring that IPID has a greater impact on these crimes. Currently, case clearance and conviction for torture are significantly lower than other forms of criminality investigated by IPID. The statistical analysis reveals that between 2012 and 2019, IPID had 1078 cases of torture, but only managed criminal convictions in 2 cases, and disciplinary convictions in 22 cases.
- The National Prosecuting Authority (NPA) declines to prosecute more than 70% of cases that are referred to it by IPID. IPID does not have a clear policy with respect to the referral of cases to the NPA for prosecution. It is also not clear the extent to which cases referred to the NPA are prima facie criminal cases, or whether referrals are made for other reasons. There is a need for greater clarity about why the NPA declines to prosecute such a high proportion of cases referred to it by IPID.
- Torture and assault cases are frequently cases in which it is difficult to achieve criminal convictions. However, this alone is not an adequate explanation of the low conviction rates achieved in these cases in South Africa. The overall levels of prosecution and conviction strongly suggest that IPID classifies investigations as 'complete' despite the fact that the investigations conducted have not been of a high quality.

Ultimately, the report highlights that even in contexts where the legislative framework criminalises torture, and mechanisms for investigation exist, if investigative capacity (amongst other competencies of an investigative mechanisms) is constrained, the potential for mechanisms such as IPID to have an impact on the behaviour of police, and to secure convictions for acts of torture, is limited.

IPID recognised the challenge in its current system for case prioritisation, and APCOF is currently providing technical support to improve IPID's impact through case screening and prioritisation. That work involves assisting IPID in strengthening its approach to

prioritisation through the formal introduction of a system of case screening, which will enhance IPID's impact by ensuring that it dedicates investigative resources in a more focused way to cases classified by the case screening system as 'top priority' and 'high priority' cases (which includes torture). The case screening system will enable IPID to more clearly and reliably distinguish serious cases from less serious cases using consistent criteria; assess the solvability of cases; and assess the relevance of other considerations that are relevant to whether to prioritise cases. If implemented, the system will enable IPID to use its investigative personnel and other resources in a more optimal manner.

Finally, APCOF draws the Special Rapporteur's attention to the report of the South African National Preventive Mechanism of its visits to police stations by independent custody visitors (2019 – 2020), which is attached. It makes reference to the high proportion of cases of torture reported to IPID in South Africa's KwaZulu-Natal province, which according to the NPM, 'merits investigation' by IPID.

We welcome the Special Rapporteur's focus on the issue of investigation, and hope that the information contained in our attached report is useful in the preparation of the forthcoming report.

Yours sincerely,



Sean Tait
Director
African Policing Civilian Oversight Forum
Cape Town, South Africa
E: sean@apcof.org.za
W: www.apcof.org.za