



CoRMSA Brief for the Independent Complaints Directorate: Police Harassment and Abuse of Foreign Nationals

April 2010

A. Introduction

The Constitution prescribes the role of the South Africa Police Force (SAPF) as being “to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.”¹ Municipal Police Services also have a role to play in preventing crime, subject to the provisions of the Constitution, in terms of the Police Service Amendment Act of 1998. Both the SAPF and Municipal Police Services therefore are mandated to protect all who live in the country, including foreign nationals. The Bill of Rights also includes civil and political rights such as the right “not to be deprived of freedom arbitrarily or without just cause”,² “to be free from all forms of violence from either public or private sources”,³ and to have “equal protection of the law”⁴. These rights are guaranteed to all within South Africa, regardless of their nationality or legal status.

Research has established that foreign nationals are less likely to report crimes committed against them to the police, compared with South African citizens.⁵ There are many reasons for this, including fear of the police and lack of trust in or knowledge of the South African justice system. Effects of this disconnection between foreign victims of crime and the police include: impunity for criminals; incentives for criminals to target foreign nationals; and public perceptions that violence against foreign nationals is officially sanctioned and supported by the police.

Given the ongoing threat of further wide-spread xenophobic violence, with the impact this has on the reputation and stability of the country, these effects are of extreme concern. Lack of trust and access by foreign nationals to the police is something that many police officers, researchers, as well as local and international organisations have identified as needing to be addressed.⁶ One of the ways in which this can be tackled is by ensuring police officers who fail to perform their duties or who engage in illegal practices are held accountable for their actions. This is the focus of this briefing document for the Independent Complaints Directorate (ICD).

¹ Constitution of the Republic of South Africa, Chapter 11, Section 205 (3).

² Constitution of the Republic of South Africa, Chapter 2, Section 12 (1a).

³ Constitution of the Republic of South Africa, Chapter 2, Section 12 (1c).

⁴ Constitution of the Republic of South Africa, Chapter 2, Section 9 (1).

⁵ Research conducted by the Wits Forced Migration Studies Programme, UN Office for the Coordination of Humanitarian Assistance and the South African Red Cross Society, 2009, Johannesburg

⁶ See for example: Bruce, Newham and Masuku, 2007, *In Service of the People's Democracy: An assessment of the South African Police Service*.

B. Scope of the Problem

In order to effectively tackle crime, police need the support and cooperation of the public, including foreign nationals. Police need to ensure that all crimes are reported and that all members of the public, including foreign nationals, are able to request and rely on police protection when necessary. Unfortunately, the cooperation and support of the police by foreign nationals and the ability of foreign nationals to seek police protection are severely compromised by the behaviour of some police officers who either refuse to perform their duties or else engage in illegal behaviour, such as extorting money from foreign nationals. The impact of such behaviour goes far beyond the person such officers target or refuse to assist. It reinforces a broader sense within migrant and refugee communities that police officers cannot be trusted and are likely to be 'predators' rather than 'protectors'.

There are a large number of police officers who do excellent work in assisting and protecting foreign nationals. CoRMSA is therefore requesting the assistance of the ICD to help root out illegal behaviour towards foreign nationals and ensure that police perform their duties in line with the police's Constitutional mandate. The ICD's role in holding individual officers to account where their actions fall outside of the law is crucial, and this role can be strengthened by working with community organisations to encourage greater reporting of illegal actions by police officers. This strategy will help to build greater confidence in South Africa's police forces, encourage greater reporting of crimes, and assist in collecting local crime intelligence.

C. Types of Current Illegal Actions by Police Officers

There are a variety of types of cases where police have been recorded as abusing the rights of foreign nationals. Some extreme cases, such as deaths in police custody and allegations of police torture have also occurred, but the list below represents the more common types of cases that are often reported to human rights groups:

1. Allegations of Abuse and Theft during Police Raids

There are often allegations of assault by police officers or theft during major operations conducted by police officers. During the raid on the Central Methodist Church in January 2008, SAPF officers were alleged to have assaulted a number of people staying inside the church and to have stolen personal items and money from church inhabitants as well as the church itself. During a further raid in July 2009, Metro Police officers were alleged to have assaulted and shocked foreign nationals staying at the church using hand-held Tasers. In Mitchells Plain in Cape Town in March 2008, SAPF officers were accused of assaulting and stealing money from foreign nationals during a raid on informal traders. During the raid, an officer is alleged to have kicked a pregnant woman in the stomach, resulting in her later suffering a miscarriage. It was also alleged that officers stole R26 000 from a woman during the raid. The money had been collected by community members to help her get the medical attention she needed. Following the incident, the woman was too afraid to lay a complaint against police officers for fear of reprisals from the police. No action was taken against the police in any of these cases.

2. Allegations of Police Collusion with Perpetrators

There have also been a number of cases where it has been alleged that police colluded with perpetrators of crimes against foreign nationals. During the xenophobic violence of May 2008, there were a number of allegations of police standing by whilst looters removed goods from the shops of foreign nationals. There were also allegations that some police officers assisted the looters in removing goods whilst others helped themselves to goods from the looted shops. In Cape Town, these allegations were confirmed by a senior City official. In a village in Limpopo in July 2009, police vehicles were seen transporting perpetrators of violence to attack Zimbabwean nationals. This occurred despite warnings of the threat of violence and the allegations of police complicity being passed on to senior local police officers. After the attack, explanations by the police for the presence of police vehicles at the site of the attack were unsatisfactory and included suggestions that citizens had taken police vehicles without permission (despite witnesses observing police in the vehicles). No action was taken against the police for these actions.

3. Allegations of Police Negligence resulting in Violence against Foreign Nationals

There are also cases where there are allegations that police were negligent and took no action to prevent violence against foreign nationals. One such example is the case in January 2009 when an armed mob shouting xenophobic slogans entered a Durban city centre building inhabited by foreign nationals and later forced three foreign nationals to jump from sixth floor windows. A ward councillor from Durban is one of those on trial at present. Witnesses reported that the mob had marched directly past the police station prior to the attack carrying weapons in plain view and chanting. Employees at the building where the attack took place stated that they called the police for assistance but the police did not arrive. No action has been taken against the police for this.

4. Allegations of Extortion and Harassment by the Police

Some of the most frequent allegations made against the police are those of harassment and extortion of foreign nationals. Foreign nationals have complained of police harassing them as soon as they believe the person is not from South Africa and then demanding to see immigration documents. Some foreign nationals who have produced legal documentation have complained that this has been destroyed by police officers, or that police officers then threatened to arrest the person for spurious charges such as 'loitering' or 'urination in public' despite the lack of truth in these charges. A bribe is then demanded by the police officer to release the person. In the same way, those who are unable to produce immigration documentation on demand are threatened with arrest and deportation by police officers unless a bribe is offered. South African law does not require a person to carry documentation on them at all times and the Immigration Act expressly states that person must be allowed the opportunity to collect their documentation if necessary. Business owners report similar harassment with police officers demanding to see immigration documentation or business registration documents in attempts to solicit bribes. Many of these cases of police abuses are not reported.

5. Allegations of Wrongful Arrests

There are frequent allegations of wrongful arrests of foreign nationals by the police. Police are frequently accused of wrongfully arresting on immigration charges foreign nationals with legal documentation, of destroying the immigration documentation of foreign nationals, or of not following due procedure and allowing suspected illegal immigrants to obtain proof of their legal right to be in the country by collecting the documentation or contacting someone who can verify their identity. Such cases have resulted in foreign nationals wrongly detained and deported without being able to access legal recourse, and in some cases, of South African citizens being deported to other countries due to police negligence in not confirming an individual's identity. In some cases where South Africans have been deported, legal action has ensued resulting in large damages claims being awarded against the Minister of Police. Yet legal recourse is not available to all. For most foreign nationals wrongfully arrested on immigration charges, unless they are fortunate and can access lawyers whilst waiting deportation or can confirm their identity with an immigration officer at the Lindela Repatriation Centre, they will be deported and no action will be taken against the police.

6. Allegations that Police Refused to Open a Case for a Foreign National

A final category of allegations is cases where police refused to assist foreign nationals in opening a case despite the foreign national having a valid complaint. A number of foreign nationals have complained about such cases and with some reporting little success when they attempted to resolve the matter with the station commissioner. In a number of such cases, the person reports that they were told that foreign nationals are not allowed to open cases against South African citizens and that 'South Africans have the right to do as they please as this is their country'. Such cases have ranged from complaints about an abusive landlord, or the reporting of a minor traffic accident. to serious cases involving allegations of police abuse. A Cape Town-based NGO complained of an incident in January 2010 where two SAPF officers allegedly assaulted and stole money from a foreign national. When he tried to lodge a complaint at the police station he was further abused and assaulted. The NGO then went with him to the police station and reported openly xenophobic remarks being made by police officers. Even with the NGO present, the foreign national was not allowed to open a case.

These are the primary types of cases that foreign nationals report concerning police negligence and abuse and are the types of cases that individuals or organisations will request the ICD to investigate. Further information on the cases listed above can be supplied to the ICD on request.

D. Suggested Way Forward

The ICD's mandate is to investigate complaints of brutality, criminality and misconduct allegedly committed by members of the SAPF and Municipal Police Services. As such, CoRMSA is requesting the development of a partnership with the ICD consisting of the following:

1. The ICD identifies police abuse of foreign nationals as a priority area and raises awareness within the ICD regarding the nature and impact of police abuses and the types of cases that occur.
2. The ICD facilitates contact for CoRMSA with provincial representatives so that CoRMSA can set up meetings or workshops with local ICD staff and migrant and refugee organisations or representatives in the regions to encourage greater reporting of cases where police abuse or negligence is alleged.
3. CoRMSA continues to raise awareness of the ICD processes amongst migrant and refugee groups and lobbies government in support of the ICD's role in holding police officers accountable for the abuse of foreign nationals.
4. The ICD flags cases involving alleged police abuse of foreign nationals within its intake system so as to assist in generating statistics or monitoring trends of allegations of police abuse of foreign nationals including noting clusters of cases relating to specific police stations.
5. CoRMSA and the ICD continue to meet on a regular basis to monitor the success of efforts to address police abuse of foreign nationals and resolve any obstacles that may emerge.