



**UNODC**

United Nations Office on Drugs and Crime

**Country/Organisation:** South Africa - African Policing Civilian Oversight Forum (APCOF)

**What are the primary challenges your country faces in ensuring equal access to justice within your criminal justice system? How do these challenges impact groups in vulnerable situation in your society? Please provide a thorough and detailed response.**

Policing in South Africa creates significant barriers to equal access to the criminal justice system due to several systemic issues. Inconsistent resource allocation is major challenge, with rural areas and lower socio-economic urban areas experiencing longer response times and fewer police stations compared to affluent urban neighbourhoods. In 2023-24, nearly 20% of respondents to the Statistics South Africa Governance, Public Safety and Justice Survey reported that the police never arrived or responded to their calls, while over 16% indicated response times that exceeded 2 hours. Over 60% of households expressed dissatisfaction with the police, citing poor response times, police absence, laziness, and corruption. Additionally, over 37% of respondents reported distrusting the police in their area.

Police corruption is another significant issue eroding public trust and access to justice. The Global Corruption Barometer Africa 2019 reported that nearly half of South Africans believed that most police officers were corrupt. Gender bias in policing also hinders access to justice, particularly for women and gender minorities, perpetuating violence and discrimination against these groups. Police brutality in South Africa is also alarmingly high, with low conviction rates for police actions that violate the law. There have been no successful cases of torture brought against the police, despite the number of complaints made to the Independent Policing Investigative Directorate (IPID) being in the hundreds, year on year (228 in 2023).

The effect is low trust in policing in South Africa – the 2024 Governance, Public Safety and Justice Survey confirms the trend that a significant number of crimes go underreported, even in the face of alarming crime statistics. For example, despite a 12% rise in crimes relating to home burglary and home robberies in the past year, only 44% of victims report housebreaking to the police, and only 57.6% reported home robberies (wherein occupants are present during the crime).

The experience of non-nationals, a key area of work in South Africa for APCOF, further highlights the systemic issues within the South African Police Service (SAPS). Non-nationals frequently face discrimination and victimisation, with police officers sometimes refusing to open crime dockets or engage with them. IPID has reported instances of police intimidation against non-nationals attempting to file complaints, further denying them access to justice and exposing them to greater risks of violence and exploitation.

The capacity of SAPS and community policing structures to prevent xenophobic violence is also inadequate. Non-nationals are often excluded from community policing initiatives, limiting the effectiveness of these structures in addressing the safety and security needs of non-national communities. Community policing is intended to build trust between law enforcement and the communities they serve. However, when non-nationals are excluded, their voices and concerns are ignored, reducing the efficacy of these efforts and leaving these communities unprotected. This exclusion, coupled with the lack of a policy framework specifically addressing the safety and policing needs of non-nationals, exacerbates their vulnerability. Law enforcement agencies are ill-equipped to handle the unique security challenges faced by non-nationals, further marginalising these communities.

The disproportionate targeting of non-nationals during police raids is another significant issue. These raids often focus on non-national communities, with authorities conducting operations that disregard procedural safeguards and legal standards, violating the rights of non-nationals and fuelling xenophobic sentiments within society.

Main sources:

<https://www.statssa.gov.za/publications/P0341/P0341August2024.pdf>

<https://apcof.org/wp-content/uploads/policing-and-non-nationals-report.pdf>

<https://apcof.org/wp-content/uploads/policing-and-non-nationals-commun>

**Can you provide examples of initiatives or policies that have been successful in addressing access to justice issues in your country? What key lessons have been learned from these initiatives or policies? Please provide a thorough and detailed response.**

In South Africa, several initiatives and policies have been implemented to address access to justice issues in response to issues relating to policing. On the issue of non-nationals, the National Strategic Plan on Gender-Based Violence has been developed as the government's strategy for tackling all forms of violence and abuse against women and children and includes. It deals with policing issues from a number of strategic entry points, including strengthening the police response through training and capacity building and dedicated units; improving accountability and oversight of the police through monitoring and evaluation of gender-based violence cases, including community oversight; enhancing victim support through integrated services and safe reporting mechanisms; improving investigative practices through strengthening forensic evidence processes and adopting a victim-centered approach to investigations; and enhanced community engagement and education through trust-building between the police and communities. Furthermore, SAPS have internal accountability structures to address police corruption, and the IPID has a mandate to investigate both corruption and police abuse of power (including deaths, torture, use of force and arbitrary arrest and detention). However, challenges remain in their implementation of these initiatives, and their impact on improving access to justice.

This is illustrated in the protections afforded to vulnerable groups such as a foreign nationals and other communities who experience barriers to access to justice on the basis of race or socio-economic status. Among the most significant are the Hate Crime and Hate Speech Act, the National Action Plan (NAP) to Combat Discrimination, Racial Discrimination, Xenophobia and Related Intolerances, and the ongoing work of Legal Aid South Africa. While these initiatives have made notable strides in promoting justice and equality at a discourse level, measuring their impact on improving access to justice remains to be fully measured and requires ongoing monitoring.

The Independent Police Investigative Directorate (IPID) is a statutory oversight mechanism responsible for investigating misconduct and criminal activities committed by members of the South African Police Service (SAPS) and Municipal Police Services. Its primary mandate is to ensure accountability within the police services, focusing on cases such as deaths in police custody, police brutality, corruption, and other serious offences involving law enforcement officers. It has

had mixed success in addressing policing misconduct and criminality – the positives have been successful high-profile investigations involving the use of force, and increased awareness and accountability which has resulted in more stringent internal and external controls (thus helping to promote a culture of accountability, at least at the discourse level). However, realising the full mandate of IPID has been challenged by resource constraints, political and institutional pressure, limited enforcement powers, and a lack of universal trust in IPID.

Independent human rights organisations have also played a crucial role in improving access to justice through legal assistance, advocacy, strategic litigation, and support: Lawyers for Human Rights, Scalabrini Centre, Centre for Applied Legal Studies, Legal Resources Centre.

Sources:

<https://apcof.org/wp-content/uploads/exploring-the-impact-of-the-independent-police-investigative-directorate-ipid.pdf>

[https://www.gov.za/sites/default/files/gcis\\_document/201903/national-action-plan.pdf](https://www.gov.za/sites/default/files/gcis_document/201903/national-action-plan.pdf)

[https://www.gov.za/sites/default/files/gcis\\_document/202405/50652preventionandcombatingofhatecrimesandhatespeech162023.pdf](https://www.gov.za/sites/default/files/gcis_document/202405/50652preventionandcombatingofhatecrimesandhatespeech162023.pdf)

<https://legal-aid.co.za>

**What are the best practices currently being implemented in your criminal justice system to enhance access to legal aid and fair trials? How do these best practices improve outcomes for individuals involved in the criminal justice system? Please provide a thorough and detailed response.**

See response to previous question regarding the Independent Police Investigative Directorate (IPID). While demonstrating best practice on paper in terms of its mandate (with the caveat on its enforcement powers), APCOF recently published a report that assessed the impact of IPID, and found a range of challenges affecting its ability to fully carry out its mandate. This includes: deficits in terms of skilled investigative capacity, shortcomings in administrative competency to prioritise and finalise cases, lack of synergy between internal and external mechanisms of police oversight, and strained working relationships between IPID, the police, and the National Prosecuting Authority (NPA).

Source:

<https://apcof.org/wp-content/uploads/exploring-the-impact-of-the-independent-police-investigative-directorate-ipid.pdf>

**What factors have been crucial in enabling successful reforms or improvements in your criminal justice system? How can these enabling factors be replicated or adapted in other contexts or regions to ensure equal access to justice for all? Please provide a thorough and detailed response.**

Police misconduct, including corruption, brutality and other forms of criminal behaviour, can severely undermine access to justice. When the police are involved in criminal behaviour, it can erode public confidence in the criminal justice system and deter victims of crime from seeking assistance. IPID's oversight functions are therefore essential in restoring and maintaining public trust. For populations vulnerable to human rights abuses by the police, such as women, migrants, and marginalised communities, the role of IPID is potentially even more significant. These groups are often disproportionately affected by police misconduct, and their ability to access justice can be compromised by fear of retaliation or further victimisation. IPID's investigations provide a mechanism for these individuals to report abuses without fear – this is important in a context like South Africa, where historical inequalities and systemic discrimination continue to affect how justice is administered.

Independent police oversight mechanisms, like IPID, are recognised globally as best practice for ensuring accountability within law enforcement agencies. They can create a more transparent and accountable police force, and send a clear message that no one is above the law, not even those tasked with enforcing it. This not only helps to deter police misconduct, but also encourages a culture of accountability within the police services.

However, police accountability and oversight mechanisms rely on a supportive socio-political environment, where there is a strong commitment to the rule of law and human rights, and the political independence of oversight bodies are guaranteed in law and practice. The former UN Special Rapporteur on extrajudicial, summary and arbitrary executions has published a study on police oversight mechanisms, which is a benchmark for assessing whether police oversight mechanisms are both structurally and functionally independent, while also ensuring sufficient

resources, mandate and capacity to fulfil their roles. We recommend that this standard be promoted as a checklist against which independent mechanisms are assessed for their impact on a range of issues, including improving access to justice.

Sources:

<https://documents.un.org/doc/undoc/gen/g10/137/51/pdf/g1013751.pdf>