



UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA

Centre for Human Rights
Faculty of Law

PRESS STATEMENT

CENTRE FOR HUMAN RIGHTS CALLS FOR A ROBUST RESPONSE FROM THE GOVERNMENT OF SOUTH AFRICA TO PREVENT XENOPHOBIC VIOLENCE

2 February 2022

The Centre for Human Rights, Faculty of Law, University of Pretoria, is concerned about the growing anti-immigrant sentiments and attacks fuelled by the recent xenophobic statements of political parties.

Some political parties have, once again, resorted to blaming immigrants, mainly from other African countries, for the socio-economic problems in the country.¹ According to reports, members of 'Put South Africa First' movement have unlawfully evicted foreigners from their rented houses, and have assaulted informal traders and destroyed their vending stalls in Johannesburg.² The president of the Patriotic Alliance Leaders political party has called on citizens to expel 'illegal foreigners'.³ This is deeply

¹ Statement of Gayton McKenzie, Patriotic Alliance Leaders, SABC News 'The ANC says it will look at South Africa's immigration challenges' 19 January 2022. <https://www.youtube.com/watch?v=WyRCJnVyHhg> (accessed 26 January 2022)

² M Msimang 'Rising tide of anti-migrant rhetoric mirrors South Africa's shameful track record' *Daily Maverick: South Africa* 25 Jan 2022 available <https://www.dailymaverick.co.za/article/2022-01-25-rising-tide-of-anti-migrant-rhetoric-mirrors-south-africas-shameful-track-record/> (accessed 26 January 2022)

³ See n 1 above.

Centre for Human Rights
Faculty of Law,
University of Pretoria,
Pretoria, 0002, South Africa

Tel +27 (0)12 420 3810
Fax +27 (0)12 362 1525
Email chr@up.ac.za
Web www.chr.up.ac.za



alarming because it authorises ordinary citizens to take the law into their own hands and decide who is legally in the country and who is 'illegal'.

Calls for the expulsion of undocumented non-nationals, whether by state or non-state actors, should take into consideration the various factors that cause a lack of documentation for non-nationals and any deportation must be done in accordance with the law. For instance, the Department of Home Affairs has discontinued its refugee reception services since March 2020, owing to the Covid-19 lockdown. Due to this, asylum seekers who arrived since then have been rendered undocumented.

International and national law oblige South Africa to protect non-nationals

The Centre for Human Rights emphasises that the State is under an obligation to protect the rights of non-nationals and to put in place effective preventive and remedial measures to ensure respect for the rights of non-nationals. This obligation is anchored in international human rights treaties to which South Africa is a party, and in its domestic laws.⁴ For example, the African Charter on Human and Peoples' Rights (African Charter) lays down an obligation on its state parties to refrain from arbitrarily expelling non-nationals.⁵ This also entails an obligation on state parties to protect non-nationals from expulsion by third parties. The International Covenant on Economic, Social and Cultural Rights (ICESCR) enshrines the right to housing, and requires states to refrain from forcibly evicting individuals from their homes, and to protect individuals' right to housing from being violated by third parties.⁶ The International Covenant on Civil and Political Rights (ICCPR) obliges its state parties to ensure remedies for the violation of the Covenant rights.⁷ It is crucial to note that with few exceptions under the ICCPR and the African Charter that relate to political rights,⁸ the rights contained under the abovementioned treaties apply to non-nationals. Moreover, the United Nations Convention Relating to the Status of Refugees protects refugees' right to housing, prohibits arbitrary expulsion, and requires its state parties to permit to 'refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage earning employment'.⁹

At the domestic level, the South African Constitution (the Constitution) and refugee laws enshrine the rights of refugees, asylum seekers and other non-nationals. The Constitution, in its preamble, declares that 'South Africa belongs to those who live in it'. With the exception of some rights that are reserved

⁴ See for eg the Constitution of the Republic of South Africa, secs 7(2).

⁵ African Charter art 12(4).

⁶ ICESCR art 11; Committee on Economic, Social and Cultural Rights 'General Comment 7' para 8.

⁷ ICCPR art 2(1) & (3)(a).

⁸ See ICCPR, art 25 & African Charter, art 13.

⁹ See Refugee Convention, arts 21 and 33(1).

for South African citizens,¹⁰ the Bill of Rights provisions of the Constitution apply to non-nationals.¹¹ The Constitution also imposes an obligation on all persons to respect the rights contained under the Bill of Rights.¹²

These international and domestic norms require South Africa to respect, protect and promote the rights of everyone, including non-citizens.¹³ The obligation to respect enjoins the State to refrain from violating human rights. The obligation to protect requires the State to ensure that human rights are protected from violation by third parties. The obligation to promote human rights obliges the State to create awareness about human rights. These obligations equally apply in respect to non-citizens and are important to counter xenophobia.

Treaty monitoring bodies have highlighted South Africa's human rights obligations towards non-nationals and made recommendations to the country to take measures to address the problem of xenophobia. For example, the African Commission on Human and Peoples' Rights recommended that South Africa 'strengthen various initiatives taken in the fight against acts of xenophobia directed at foreign nationals to bring about a more coordinated response to the increased protection needs of foreign nationals'.¹⁴ The Committee on the Elimination of Racial Discrimination has requested the State to strengthen measures to eliminate xenophobia through 'public education programmes that promote tolerance and respect for diversity'. It has also recommended that South Africa 'deter racism and xenophobia and promote a positive image of ethnic groups within the State party'.¹⁵

Public statements fuel xenophobia

Despite the legal protection of non-nationals under international human rights norms and South Africa's national laws, xenophobic attacks have continued to occur in South Africa. They are often triggered by either subtle or overt anti-immigrant speeches made by public figures that blame foreign nationals for the high unemployment rates and other social and economic problems in the country. A week ago, the president of the Patriotic Alliance Leaders political party, Mr Gayton McKenzie, remarked as follows:

¹⁰ These are political rights (secs 19(1)-(3)); and freedom of trade, occupation and profession (sec 22).

¹¹ Constitution of South Africa, sec 7(1) states that '[t]he Bill of rights ... enshrines the rights of *all people in our country* ...' (*emphasis added*).

¹² Constitution of South Africa, sec 8(2).

¹³ See for eg Constitution of South Africa, sec 7(2); ICCPR, art 2; Human Rights Committee 'General Comment 31: The nature of the general legal obligation imposed on states parties to the Covenant' paras 3, 5-7.

¹⁴ The recommendation of the African Commission on Human and Peoples' Rights on South Africa's combined second periodic report (2016) para 57(ii).

¹⁵ Concluding observation of the Committee on the Elimination of Racial Discrimination on South Africa's combined initial to third periodic reports (2006) para 27.

This movement is only starting ... the Nigerians have hijacked the whole of Hillbrow, the whole of Rosettenville. What we are saying is that it is time for them to go home so that our children can get jobs ... last year, during Covid, you couldn't buy cake flour in this country ... because the Somalians bought 125 million Rands worth of cake flour so that they can up the price. This is mafias operating here ... they are going home.¹⁶

Prevention is better than cure

Statements like this have previously incited xenophobic attacks that quickly spread across cities and provinces. Therefore, it is imperative that preventive measures that accord a central place to the human rights of non-nationals, pan-African solidarity and *Ubuntu* are taken. Frans Viljoen, Director of the Centre for Human Rights, said: "Prevention is better than cure. We do not want to see a recurrence of widespread violence against non-nations in our country. Reckless politicians and other public figures must refrain from making populist remarks that stir anti-immigrant sentiments, merely in a misguided attempt to enhance their own popularity."

In light of these, the Centre for Human Rights makes the following recommendations:

- The South African Government should take measures to sensitise the general public, through the media, human rights education and engagement with local communities, on the rights of immigrants and their positive contributions to society in order to dispel negative images of immigrants.
- The South African Government should ensure that the law enforcement machinery of the state promptly responds to xenophobic attacks and holds perpetrators accountable.

For more information, please contact:

Mr Abiy Ashenafi
Acting Manager: Migration Unit
Abiy.Ashenafi@up.ac.za
www.chr.up.ac.za

Lloyd Kuveya

¹⁶ See n 1 above.

Assistant Director
lloydkuveya@gmail.com
www.chr.up.ac.za