



A workshop on early warning and urgent response to Xenophobic violence

Monday 29 April 2024
137 Murray Guest House, Brooklyn
9:00 - 15:00 (SAST)

Introduction

Early warning and urgent response mechanisms require devising interventions informed by systematically analysed, verified, and timely information on potential threats to the security of immigrants. Although migrants, migrant rights advocates, and civil society organisations formed by, or working for the protection of the rights of migrants, are key actors in fostering early warning and urgent response mechanisms, their engagement with such mechanisms has been limited. Furthermore, to effectively counter xenophobic violence, the early warning and urgent response initiative, coordinated by the Department of Justice and Constitutional Affairs of South Africa, needs to be strengthened. To achieve this, empowering key actors to pursue coordinated advocacy is important.

The Centre for Human Rights, Faculty of Law, University of Pretoria, with the financial assistance of the Embassy of Switzerland, invites migrants, CSOs, and migrant rights advocates to participate in a workshop organised to facilitate the increased engagement of these actors in the early warning and urgent response initiative. The workshop will also create a platform for participants to discuss advocacy strategies for the establishment of a robust and more effective early warning and urgent response mechanism in South Africa.

Background

Over the last two decades, several efforts have been exerted to eliminate xenophobia and its manifestations in South Africa. However, the occurrence of xenophobic incidents is on the rise. As of 18 March 2024, 1069 incidents of xenophobic discrimination and violence have occurred since 1994, resulting in 669 deaths, 127,572 displacements, and the looting of 5310 shops.¹ The victims of xenophobic violence are not only immigrants but also South Africans mistaken for immigrants.

To counter xenophobia and its violent manifestations, early warning mechanisms play a critical role in devising appropriate interventions. Early warning mechanisms entail collecting timely and factually correct information on potential threats to the security of immigrants (and citizens), verifying the reliability of the information, conducting a systematic analysis of the information, and recommending suitable measures to be taken by decision-makers, law enforcement institutions, local communities, immigrants and other actors. Proactive and timely responses to the threat of xenophobic violence are crucial to avert xenophobia-related developments before they spiral into violence and result in the loss of lives, forced displacements, and the destruction of property. Proactive measures are beneficial because they are more effective and less costly than reactive responses to violence.²

The significance of these measures to address the challenge of xenophobia in South Africa has been acknowledged by the Government of South Africa, CSOs, and academic institutions. In the aftermath of the outbreak of xenophobic violence in the past, CSOs and academic institutions have recommended that the Government establish an early warning and urgent response mechanism. In 2019, the South African Government entered a bilateral agreement with the Government of Nigeria to ensure collaboration between the two governments on early warning systems.³

The South African Government has also initiated its own early warning and urgent response mechanism, comprised of different government departments, relevant United Nations (UN) agencies, civil society organisations, and academic institutions.

The Centre for Human Rights welcomes the measures taken by the Government of South Africa to form this mechanism. It recognises that this mechanism complements existing efforts and is crucial to address the longstanding challenge of xenophobia, which continues to adversely affect migrants and South Africans,⁴ and South Africa's diplomatic relations with other African countries. However, given the magnitude of the challenge at hand, in order to harness the benefits of this mechanism, the Centre for Human Rights stresses that it is essential to strengthen this initiative and establish it as a robust and effective early warning and urgent response mechanism.

The significance of early warning and urgent responses in the context of the upcoming election

Although many migrants experience xenophobic discrimination and harassment in their daily lives, major episodes of xenophobic violence occur in the context of particular triggering situations or events. In the context of elections, election campaigns laden with anti-immigrant rhetoric may precipitate the occurrence of incidents that result in the outbreak of xenophobic violence. It is for this reason that in the lead-up to the general election scheduled for 29 May 2024, the exploitation of xenophobic narratives by some politicians and their supporters raises alarm about the potential risk of the outbreak of xenophobic violence.

Although South Africa's immigration policy and its implementation form part of the political agenda of certain political parties and this is lawful, it is necessary to ensure that political parties, independent candidates, and their supporters conduct political mobilisation in line with pertinent laws that protect the human rights of migrants and govern electoral conduct.

1 Xenowatch 'Xenophobic discrimination in South Africa: 1994-18 March 2024' available at <https://www.xenowatch.ac.za/statistics-dashboard/> (accessed 21 March 2024).

2 In the context of conflicts, see for eg AL George & JE Holl 'The warning-response problem and missed opportunities in preventive diplomacy' Report to the Carnegie Commission on Preventing Deadly Conflict (1997) 1.

3 The Citizen 'Nigeria, SA pledge "early warning systems" to stop xenophobic attacks' 3 October 2019 available <https://www.citizen.co.za/news/south-africa/government/nigeria-sa-pledge-early-warning-systems-to-stop-xenophobic-attacks/> (accessed 25 March 2024).

4 LB Landau Exorcising the demons within: Xenophobia, violence and statecraft in contemporary South Africa (2011) 3.

Politicians and their supporters must conduct political campaigns with civility and refrain from using language that dehumanises immigrants or jeopardises their human rights.

The Electoral Code of Conduct stipulated in the Electoral Act No. 202 of 1993 (the Act) not only requires political parties, independent candidates, and their supporters to abstain from 'any action involving violence or intimidation,' but also enjoins them to 'publicly and repeatedly condemn violence and intimidation, and to avoid the use of language or any kind of action which may lead to violence or intimidation'.⁵ The Act also proscribes 'creating hostility or fear' and stipulates penalties against any person, including political parties, independent candidates and their supporters who breach the Code of Conduct enshrined under the Act.⁶

Although the Electoral Act implicitly prohibits politicians from using xenophobic 'language or action,' some political parties have, in several instances, attempted to rally support by exploiting xenophobic narratives. This accentuates the importance of promoting the human rights of migrants, which are protected under South African laws and applicable international human rights law. In this context, the obligation of the State to promote refers to its duty to create or increase awareness, by politicians and their supporters, about migrants' rights.

Increasing awareness by politicians about their obligations – for example, their duty to refrain from making statements that may incite xenophobic violence, and to denounce violence against migrants – is inseparable from promoting migrants' rights.

The obligation to ensure adherence to the abovementioned obligations by duty-bearers, and broadly, the protection of the human rights of migrants, rests with the State.⁷ With regard to xenophobic harassment, discrimination and violence linked to political mobilisation, the State's obligation to protect migrants includes ensuring that political parties, independent candidates, and their supporters respect the laws protecting migrants' rights. Enhancing the legal framework and strengthening the institutional framework by establishing an early warning and urgent response (among others) is crucial to protect migrants from xenophobic violence.

In the short run, as South Africa approaches its 2024 National and Provincial elections, the effective utilisation of existing early warning and response mechanisms by migrants, migrant rights advocates and CSOs will play an important role in the prevention of the outbreak of xenophobic violence and in the provision of timely remedial responses. In light of this, the Centre would like to invite grassroots CSOs of migrants, CSOs working in the protection of migrants, and migrants' rights advocates to this workshop.

Objectives of the workshop

To advocate for the aforementioned measures to be taken, and to utilise existing mechanisms for the prevention of xenophobic violence and the protection of immigrants and South Africans, the increased engagement of migrants and relevant actors with existing early warning and urgent response mechanisms is crucial. The workshop aims to build the capacity of these actors on early warning and urgent response mechanisms and to facilitate a platform for advocacy for strengthening legal and institutional frameworks to effectively address the critical challenges in addressing xenophobic violence in South Africa.

The workshop seeks to:

- Create increased awareness by participants about the early warning and urgent response initiative in South Africa and other mechanisms, and how they can utilise these mechanisms.
- Facilitate an opportunity for participants to share their experiences and insights.
- Advocate for government action to prevent manifestations of xenophobia, and devise an effective early warning and urgent response to xenophobic violence.
- Stimulate conversations on strengthening networks among CSOs, between CSOs, partners, and government, for information sharing, validation, and urgent responses.

5 Electoral Act 202 of 1993, Schedule 2, secs 4(a)&(b). See also The Electoral Code of Conduct, available <https://www.elections.org.za/pw/Parties-And-Candidates/The-Electoral-Code-Of-Conduct> (accessed 23 March 2024).

6 See for eg Electoral Act 202 of 1993, secs 65(d); 69(2)(iv) & (v)(aa)-(dd). The penalties include the imposition of fines, imprisonment, 'an order prohibiting [...], whether permanently or for a specified period, from utilizing any media,' and the prohibition of 'distributing campaign literature and electoral advertising'.

7 Constitution of South Africa of 1996, secs 7(2) & 8(1).