

ADDRESSING THE EMERGING ISSUES OF XENOPHOBIC ATTACK AND HUMAN RIGHTS VIOLATIONS IN SOUTH AFRICA: ADOPTING A HUMAN RIGHTS-BASED APPROACH

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Abstract: Human Rights abuses in South Africa occasioned by xenophobic attacks in South Africa had occurred intermittently for over a decade despite the hue and cry against xenophobia. Driven primarily by efforts to protect human life and overcome the challenges of xenophobia, some international human rights organisations expressed their views on the curtailment of human rights abuses perpetrated in South Africa. Contextually, South-Africa has notable human rights organisations, yet human rights abuses happen through xenophobic attacks in some parts of the country. The primary objective of this paper is to identify human rights challenges brought about by xenophobic attacks, including the right to human dignity and the right to life. This methodology adopted in this paper included reference to statutes, internet sources, and newspaper publications. This paper finds, amongst others, that despite the United Nations conventions and other international laws guaranteeing the human rights of all persons, the South African government appeared overwhelmed by the xenophobic attacks in dealing with the situation. This paper made useful recommendations towards preventing future xenophobic attacks and avoiding human rights violations.

Keywords: Xenophobic Attack, Human Rights, South African, International Instruments.

1. INTRODUCTION

The abuse of human rights in South Africa via xenophobia is topical and trending, and several authorities have expressed their views on the ugly situation prevalent in South Africa. Those who expressed their views include the international communities, journalists, diplomats, international lawyers, parliamentarians of several countries, political scientists, religious bodies, international observers, etc. The Universal Declaration of Human Rights (UDHR), a founding document of human rights law, requires universal respect for human rights (General Assembly Resolution 217A (111), United Nations Document A/810, 1948). This article adopts a human rights-based approach focused on international human rights standards and operationally directed at promoting and protecting the human rights of persons in South Africa and beyond.

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Despite the persistence of concern and criticisms from different stakeholders, xenophobic attacks have been noticed intermittently in some provinces in South Africa. Xenophobia consists of highly negative perceptions and practices that discriminate against non-citizen groups based on their foreign origin or nationality (Crush and Ramachandran, 2009 47). It may be seen as an act of violence, aggression and brutality towards migrant groups that represent extreme and escalated xenophobia. The extent of xenophobic attacks in South Africa is disturbing and worrisome compared to what is prevalent in other regions where similar situations have occurred (Gordon, 2017). These non-state actors' attacks on foreigners in South Africa had caused great pain, and no reparations had been made to victims or dead victims' next of kin.

When issues of human rights abuse or brutality are brought before the International Court of Justice (ICJ), the court usually awards punitive damages against the government of the perpetuating state actors. Many writers in the past and present have condemned the abuse of human rights by any country. This essentially meant that the unabated occurrence of xenophobic attacks in South Africa should be adequately addressed. It should also be addressed in other African countries bearing in mind that when such an ugly incident occurs, it is only the Africans in that country who are the victims or casualties (Fagbadebo & Ruffin, 2018).

Notwithstanding scholarly efforts and international judicial contributions in denouncing every trace of violation of human rights, xenophobic attacks in South Africa still occur intermittently. However, there have been condemnations of late by the international players against xenophobia. There is no gainsaying that for the human rights of domestic and foreign citizens to be preserved, South Africa's government must maintain some degree of proactive action. This is not to say the government folded its hands. Still, it needs to put in more efforts by way of local legislation, monitoring and enforcing the respect for human rights by all, according to the United Nations Declaration. Undoubtedly, many foreigners have suffered tremendous and unquantifiable brutalities resulting from xenophobia. Nevertheless, peaceful coexistence in Africa is essential for human rights protection in African democracy, and by so doing, South Africa can be seen as the cynosure of Africa. An article of this nature will serve the immediate and future needs of contemporary jurisprudence and international relations.

2. OVERVIEW OF CONCEPTS

Defining Xenophobia, Human Rights and Fundamental Rights

Conceptually, the Black's Law Dictionary did not define xenophobia. Still, the Chambers Dictionary⁵ defined xenophobia as "fear of things foreign" and is best tailored to unique challenges and circumstances confronting the human rights of a State. The dictionary further described a xenophobe as "one who fears or hates foreigners or things foreign"⁶. Despite its prevalence, xenophobia is not an unavoidable

⁵ 20th ed. page 1579

consequence of human rights. Like any other violation, it can be prevented. In addition, one of the significant points to note herein is that xenophobia is often construed as racism (Akinola, 2018). This position was reaffirmed by Kaluba, who submitted that xenophobia and racism overlaps even though they are two different concepts (Kaluba, 2016). On the other leg, the term human rights, according to Black's Law Dictionary, is defined as the freedom, immunities and benefits that, according to modern values (especially at the international level), all human beings should be able to claim as a matter of right in the society in which they live⁷. Undoubtedly, human rights law applies at all times.

Furthermore, in defining fundamental human rights, the Blacks Law Dictionary⁸ defines a fundamental right as a right derived from any country's natural law, fundamental law, or Constitutional law. A significant component of liberty, the encroachment of which is rigorously tested by Courts to ascertain the soundness of the purported government justification. In light of the above definitions of human rights, sometimes one is tempted to ask if human rights have been recognised to the extent where violations may be actionable in court or a mere rhetoric (Knowes, 2003: 133). This has brought about the continued misconception of human rights(Keet, 2010). Although it may be questioned why the issue of xenophobia has remained unabated in South Africa even though the Bill of Rights, as contained in the South African Constitution, provides for the right to life, equality of rights of everyone and also the right to movement of persons.

It is today clear that human rights are construed as a veritable tool for addressing the inhuman and degrading treatment of human beings around the globe (Dutoit, 2014:48-69). Indeed, the above definitions of human rights and fundamental rights by the Blacks Law Dictionary show that human rights are the rights of the citizens, not privileges, regardless of their country of abode. However, human rights are, therefore, a global affair. It is founded on the international principles of non-discrimination, meaningful participation and accountability aimed at analysing equalities and redressing discriminatory practices and Human rights violations⁹.

2.1. History of Xenophobic Attack in South Africa

Tracing the background of xenophobia in South Africa will help us appreciate the enormity of the phenomenon called xenophobia. The xenophobic account states that before 1994, foreigners faced discrimination in South Africa. This is not to say that xenophobia started in 1994; however, It was thought that after majority rule in 1994, the discrimination would abate; but regrettably, between 2000 and 2008, as many as 67 persons were reported killed via xenophobic attacks¹⁰. A deadly attack on foreigners was reported in May 2008,

⁶ Ibid 74

⁷ B.A. Bryan, Black's Law Dictionary (9th edn.), United States of America: Thomson Reuters, 2004, P. 809.

⁸ ibid

⁹ <https://www.un.org/ruleoflaw/thematic-areas/human-rights/equality-and-non-discrimination/> accessed >9th June 2023

upon which 62 persons were killed, among which 21 were South Africans (Thinane, Jonas Sello 12th November 2022). It was believed in some quarters that the apartheid policy placed a mindset of discrimination in the black South Africans, making them unfriendly towards foreigners, especially the illegal migrants¹¹. A major xenophobic attack in 2015 at Grahamstown in the Eastern Cape displaced over 500 persons, and over 300 shops and properties were destroyed. It was believed that Muslims were the main victims of this 2015 mayhem. The 2019 attack in Jeppeston and Johannesburg also killed several shops and business premises. It started in Johannesburg on 1st September 2019, and foreigners were the target (Haffajee, Ferial on 2nd September 2019). A cursory look at the number of persons killed in these attacks is beyond mere human rights abuses. It is a crime against humanity for people to be killed and businesses to be destroyed with impunity serially.

2.2. South Africa and Human Rights Protection Under Its Constitution

It is important to note that Section 9 of the Constitution of South Africa 1996 provided for legal and social equality. It must be emphasised that Section 9 was passed under the Universal Declaration of Human Rights¹². Section 9 of the Constitution of South Africa provides for the equality of all citizens before the law, and citizens have the right to equal protection and benefit from the law. Further, Section 10¹³ of the same Constitution recognises the right to human dignity and the need to respect and protect the same. In the same vein, Section 11¹⁴ of said Constitution 1996 provides: “Everyone has the right to life”. This section 11 received judicial confirmation in *S v. Makwanyane*¹⁵, where the South African Court ruled that the current Constitution of South Africa prohibits capital punishment. Accordingly, in Section 12 of the South African Constitution, South Africa firmly believes in the fair treatment of persons within its jurisdiction. This can be seen in section 9¹⁶ Constitution of South Africa 1996, which provides for legal and social equality with the wordings clearly in line with the Universal Declaration of human rights and which states: “Everyone is equal before the law and has the right to equal protection and benefit of the law”.

¹⁰ https://www.google.com/search?q=history+of+xenophobia+in+south+africa&sxsrf=APwXEdd4ZJyEk_HVQ6Pi0BdZ1qWnYpLSbQ%3A1686499070358&ei=_u6FZOKmFYSP8gLnYfIDw&oq=trace+the+development++of+xenophobia+in+south+africa&gs_lcp=Cgxnd3Mtd2l6LXNlcnAQAARgAMgUIABCiBDIFCAAQogQyBQgAEKIEOgoIABBHENYEELADoggIIRCgARDDBDoKCCEQoAEQwwQQckoECEEYAFc6Bli5OmDiXGgBcAF4A4ABgxOIAe5-kgENNC0xLjguMi4xLjEuM5gBAKABAcA BAcbCA&scient=gws-wiz-serp accessed >9th June 2023

¹¹ https://www.google.com/search?gs_ssp=eJzj4tVP1zc0TKuqLCysKig0YPRSZcgsLskvqITIT1OoSM3LL8jIT8pMVMjMUyjOLy3JUEhMK8pMTgQADY4TmQ&q=history+of+xenophobia+in+south+africa&rlz=1C1YTUH_enNG1040NG1040&oq=history+of+xenophobia&aqs=chrome.1.69i57j46i512j0i512i3j0i22i30i3j0i15i22i30.14002j0j15&sourceid=chrome&ie=UTF-8 accessed >20th December 2022

¹² 1948

¹³ The Constitution of South Africa 1996

¹⁴ Ibid.

¹⁵ *S v. Makwanyane* (1995) ZACC 3; 195 (6) BCLR 665

¹⁶ Constitution of South Africa 1996.

The dignity and security of life are well portrayed in the South African constitution. This is shown under Section 10¹⁷ of the South African constitution, which provides: 'Everyone has inherent dignity and the right to have their dignity respected and protected'. The dignity of a human person cannot be realised if the person's security and freedom are not guaranteed. This prompted the drafters of the constitution to insert section 12. We shall reproduce section 12 of the South African constitution for emphasis:

Everyone has the right to freedom and security of the person which includes the right (a) not to be deprived of freedom arbitrarily or without just cause (b) not to be detained without trial; (c) to be free from all forms of violence from either public or private sources; (d) not to be tortured in any way; and (e) not to be treated or punished in a cruel, inhuman or degrading way¹⁸.

The dignity of the human person and the right to life or human rights generally is so sacrosanct; these rights, when breached, the breaching authority or person as the case may be, can be challenged or ought to be challenged in the competent court of jurisdiction to test the justification of the violation. Bearing in mind that xenophobia is the theme of this article, we shall examine Sections 9, 10 and 11, respectively, of the Constitution of South Africa 1996. However, the various sections protecting human rights had their foundation in the United Nations Organization (UNO), and this explains why the United Nations has, by its Declaration¹⁹, pressed it upon member states to observe and promote the observance and enforcement of the respect for the rights of its citizens at all times. Articles 3 and 5 of the Universal Declaration of Human Rights speak volumes against human rights violations. Article 3 provides everyone the right to life, liberty and security. Article 5 provides that no one shall be subjected to torture or cruel, inhuman and degrading punishment.

That said, it must be emphasised that the above two cited articles are self-explanatory in their wording so that everybody who cares to peruse them can enlighten himself. Therefore, the UN cannot fold its hand and watch any country flout these laudable provisions in Articles 3 and 5. The United Nations must intervene through its monitoring agencies where it perceives that a violation is likely to occur or has occurred. The culprit or offending member state must yield with good grace, regardless of the status of the member state in the comity of nations. In the African continent, there is a wake-up call for the respect of human rights by all and sundry. No wonder that in 1979 the Assembly of Heads of States and Governments of the Organization of African Unity (OAU), now called the African Union (AU), came up with the African Charter on Human and Peoples Rights, adopted in Banjul, Gambia and came into force on 21st October 1981.

The Charter emphasised political, economic, social and cultural rights. The African Charter provides for establishing the African Commission on Human and Peoples Rights

¹⁷ Ibid.

¹⁸ South Africa (n 5) .

¹⁹ Universal Declaration of Human Rights (1948); <https://www.iiste.org/Journals/>>accessed 4 April 2020.

and ensures these rights are protected. It should be noted in this international instrument that South Africa was a signatory and domesticated, as exemplified in the provision of the South African constitution cited earlier. These international instruments have become domestic laws with global backup. No wonder in the Nigeria case of *Fawehinmi v. Gen Sani Abacha & Ors*²⁰, the Court of Appeal in Nigeria stated that the African Charter on Human and Peoples Rights, having been incorporated into the Nigeria organic law by legislation is enforceable in Nigeria and same has consequently been enforced.

Furthermore, the African Charter did not mince words as it made it clear that the dignity of the human person must be honoured and respected at all times except as provided by the domestic laws after due process of the law of that State; no human being should be subjected to cruel or degrading treatments. Also, Article 5 (a)²¹ states: “Every individual shall have the right to the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.” The implication of Article 5 (a) above of the African Charter and its domestication and subsequent judicial pronouncement, as seen above in *S v Makwanyane*²², implied that South African citizens, their government must observe the Charter and see that all persons, citizens and nationals of other countries have their human rights preserved in South Africa. It is not just the UN charter that emphasises respecting human rights for human persons irrespective of where they reside or do business. Articles 4 and 5 of the African Charter on Human and Peoples Rights 1981 also emphasised the dignity of human persons. Article 5²³ whereby provides thus:

Every individual shall have the right to the dignity inherent
in a human being and to the recognition of his legal status.
All forms of exploitation and degrading of man, particularly,
slave trade, torture, cruel, inhuman or degrading punishment
and treatment shall be prohibited.

While undoubtedly important, the implication of Article 5 above of the African Charter and its domestication and subsequent judicial pronouncement, as seen in the case of *S v. Makwanyane*²⁴, implied that South African citizens and their government must observe and comply with the provisions of the Charter and ensure that all persons, citizens and nationals of other Countries have their human rights preserved and protected in South Africa as in elsewhere around the globe. Further, this Charter has created or ought to create the necessary consciousness in the heart of every leader in the world to observe and protect human rights. The right to dignity of the human person and the right to life is

²⁰ (1996) 9 NWLR (pt 475) 710 (CA)

²¹ African Charter on Human and Peoples Rights (1981).

²² (1995) ZACC 3; 195 (6) BCLR 665. (HC)

²³ n17

²⁴ n18

clear from drafting of the Constitution of South Africa 1996. It must be emphasised that xenophobes failed to observe the Constitution of South Africa 1996; instead, they maimed and killed persons in utter disregard to the right to life and dignity of human persons. Notably, a person being dehumanised or killed due to a xenophobic attack is evidence of human rights violation, and the perpetrators must be brought to book.

The South African courts have never hesitated when the opportunity shows up; to condemn any acts that degrade human persons or wanton destruction of lives and property. The Judges in South Africa are humans and will not be pleased if given inhuman treatment in a foreign land. This is why xenophobic attacks must be stopped in South Africa and elsewhere in the world. Thus in *Ngomane v City of Johannesburg Metropolitan Municipality*²⁵, the Applicants were forcibly removed from the traffic estate and their property destroyed in the city of Johannesburg, after which the Applicants brought an action for Declaration of breach of their rights to dignity of human persons and unlawful destruction of property. The court found for the applicants and condemned the action of the Respondent for a breach of the dignity of the human person and unlawful destruction of property. The court, therefore, awarded constitutional damages in defence of the constitution, which the Respondent breached by its action.

Similarly, in the Nigeria case of *Alhaja Abibatu Mogaji & Ors v. Board of Customs and Excise & Anor*²⁶, the Plaintiffs were market women. They brought a civil action against the defendants, the Board of Customs and Excise and its Director in Nigeria, alleging that the Plaintiffs were beaten with horsewhip by the defendant's staff assisted by soldiers and mobile police officers. The plaintiffs further alleged that the customs officials and other law enforcement fired guns and teargas on the nine plaintiffs for the sole reason that the plaintiffs were purportedly in possession of certain contraband goods in their shops. The court held that the Defendants' action violated the women's fundamental rights under section 31 (9) of the 1979 Constitution of the Federal Republic of Nigeria, now section 34 of the 1999 Constitution. The court condemned the action of the Defendants in the following words:

I would make an order for a declaration that the action by the customs men aided by police officers and soldiers with the using guns, firing of same, the use of horsewhip and tear gas for the apprehension, seizure and detention of goods suspected to be prohibited as was meted to first, second, third, fourth, fifth, sixth, seventh and eighth plaintiffs' witnesses and removal of their goods without due investigations violate the rights of the plaintiffs under the Constitution of the Federal Republic of Nigeria, not to be subjected to any inhuman or degrading treatment.²⁷

²⁵ (2019) 3 All SA 69 (SGA).

²⁶ (1982) 3 NCLR 552 at 562 (HC)

²⁷ *ibid*

Drawing from the above scenarios, One can see from the two cases cited that both Nigeria and South Africa and most countries of the world consider the breach of the right of the dignity of the human person a serious legal wrong that both courts did not hesitate to make pronouncements and awarded damages as appropriate. It should be noted that South Africa operates the rule of law, so whenever such actions bordering on a breach of the dignity of human persons were brought to the court's attention, the courts made pronouncements by way of an award against the breaching authority or party. According to international standards, every person has the right to liberty, and no one shall be deprived of this right unlawfully or arbitrarily (Article 37(b) Convention on Right of the Child, 1989, Article 9(1) International Covenant on Civil and Political Rights, 1966). Furthermore, since the position of international law on the issue of xenophobia is clear, it should be kept in mind that Article 4(a) of the International Convention on the Elimination of All Forms of Racial Discrimination to which South Africa is a party, required States Parties to refrain from acts capable of incitement to racial discrimination or violence. In this respect, xenophobic attacks on persons in South Africa are uncalled for, and the perpetrators could best be described as barbarians. A xenophobic attack is a barbaric act that infringes on one's right to liberty and the deprivation of lawful rights.

Further, to appreciate the importance of the right to life, the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) both set forth the basic human rights to be universally safeguarded (Preamble Universal Declaration of Human Rights, 1948 and International Covenant on Civil and Political Rights, 1966). In a similar vein, drawing from the predominant provisions of Section 10 of the Constitution of South Africa, which provides that "Everyone has the right to life"; as well as the decisions of the Court in *S v. Makwanyane*,²⁸ the South African Court also ruled that the current Constitution of South Africa prohibited capital punishment. The decision in Makwanyane's case makes it judicially clear that taking human life without due process is a condemnable and severe offence.

The position of the African Charter on Human and Peoples Rights, as regards the right to life, is that human rights are inviolable. Every human being shall enjoy his life and the integrity of his person. It is, therefore, an aberration to deprive a person of this right arbitrarily.²⁹ In light of the above, it is right to say that the Constitution of South Africa, coupled with the Universal Declaration of Human Rights 1948 and The African Charter on Human and Peoples Rights 1981 have all shown without doubt that respect for human rights is at the centre of democracy around the globe. All must uphold the human rights crusade and should not toil with it, no matter the citizen involved- whether national of South Africa or a foreigner in South Africa. In the Nigerian environment, the Supreme Court of Nigeria demonstrated respect for the right to life when it unequivocally held that the execution of an appellant during the pendency of the appeal violated the applicant's right to life, and the court awarded damages against the government.³⁰

²⁸ (1995) ZACC 3; 195 (6) BCLR 665. (HC)

²⁹ Art. 4 ACHPR 1981.

³⁰ *Nasiru Bello v. the State*, 9 NWLR part 589, 765 (1996).

Notwithstanding international instruments protecting human life and the dignity of the human person, cum constitutional provisions in South Africa already highlighted above, which ought to be respected by all and sundry, some South African citizens had wantonly and flagrantly abused the human right to dignity and ownership of property, as shown in the manner lives and properties were lost between 2000 and 2008, 2015 and 2019. Given the above prevailing circumstances, it may legitimately be questioned whether the expansive interpretations of the relevant treaty provisions are suitable and or capable of addressing the issue of xenophobia in South Africa. The legal position regarding xenophobic violence in South Africa has received widespread condemnation by scholars of international law and human rights law. On different occasions, they have expressed their concerns about the ugly situation, but the fact remains that the root cause of xenophobia has not been addressed (Tevera, 2013:9-26).

The question that must be asked at this stage is: If the South African government is prepared to address the issue of xenophobia, why has it failed to understand the causal factors responsible for xenophobic attacks? However, it is contended that no matter what has been canvassed as reasons for the xenophobic attack on non-nationals by South-African citizens, it must be emphasised that the sanctity of human life remained sacred. (Human Rights Watch Report, 2020:4).

2.3. Reasons Adduced for Xenophobic Attacks

There is a need to examine the reasons for xenophobia and proffer solutions to these incessant xenophobic attacks against foreigners in South Africa. Notwithstanding several international instruments protecting human life and the dignity of human persons, Some South Africans have attacked and killed foreigners in the country. Some South African citizens had disregarded the right to life and dignity of human persons due to attacks on foreigners. They also violated the respect for the right to property ownership by destroying properties belonging to foreigners. Reasons adduced for xenophobic attacks in South Africa are as follows:

i. The rise in the unemployment level

Abdi Latif Dahir reported that in September 2019, 29% of the South African population was unemployed as of July 2019, representing 6.7 million. 71% of the unemployed persons spent about a year before finding a job. He further said that many South Africans blamed the immigrants who had taken over their careers, leaving them unemployed. The frustration caused by the unemployment rate provoked xenophobic attacks on foreigners. The unemployment ratio prompted South African president Mr Cyril Ramaphosa to refer to the situation as a deep and severe crisis³¹.

³¹ <https://qz.com/africa/1708814/what-is-behind-south-africas-xenophobic-attacks-on-foreigners>

There is no doubt that unemployment could cause frustration in the life of the unemployed, who, if not counselled and assisted, may become a deviant in the society in which he lives. A frustrated citizen may vent his frustration on any perceived cause of the deprivation in his life. It is submitted that the South African government should create a robust unemployment scheme far above what obtains now. The government should establish a youth empowerment scheme to assist unemployed persons in gaining employment. If this is effectively implemented, the unemployed citizens' tendency to attack foreigners will be removed or minimised.

ii. Rise in Crime wave in South Africa.

Abdi Latif Dahir, in his report, noted that South Africa experienced high crime waves in 2019, resulting in over twenty-one thousand persons (21000) killed 2019. There are murder cases, sexual offences, armed robbery and drug-related offences. These offences were attributed to the presence of immigrants in South Africa³².

Criminality is a product of the society where the crimes are perpetrated. Sexual offences, armed robbery, murder and other vices are not peculiar to any nationality or race. Without migrants, criminality will exist in South Africa, as in any other society. Suppose unemployment led people into crimes of armed robbery and drug peddling. In that case, it is the responsibility of the government of South Africa to expand or diversify the economy to boost employment opportunities. No statistics point to foreigners as the only crime perpetrators in South Africa. We submit that the government should strengthen its security apparatus to meet the security challenges in the country.

iii. The Rising Number of Immigrants

It was believed the rise in the immigrants in South Africa had caused overstretch in the infrastructure such as the health care system and housing needs leading to high house rents. The reporter countered these claims by stating that the immigrants represented only 2.1% of the total population of 51.7 million in 2011, but the figure had risen to 55.7 in 2019. South African authorities deported 370 000 immigrants³³ between 2012 and 2016, mainly Zimbabwean, Lesotho and Mozambique nationals, to reduce the impact of immigrants on the economy³⁴.

South Africa is a member of the African Union. It is expected that fellow Africans are likely to migrate to South Africa if it is their destination of choice. Migration is a product of several factors ranging from seeking greener pastures to safety purposes. South Africa should adopt stringent measures to curtail illegal migrants. Some of these migrants contribute their skills towards the economic development of their host country. There is no proof that migrants alone constitute criminals in South Africa. The report of Abdi Latif

³² *ibid*

³³ *n27*

³⁴ *ibid*

Dahir reveals that migrants constituted only 2.1% of the total population of South Africa in 2019³⁵. This proportion is insignificant to form the high crime rate in South Africa.

iv. Economic and Social Challenges

The South African xenophobes also felt that foreigners had taken over the economic opportunities of the nationals of South Africa. It was also reported that some South Africans complained that foreigners were taking over their jobs and women and living prosperous lives. At the same time, the citizens of South Africa experienced a lack and hunger. The xenophobic attacks were targeted at non-white foreigners but directed at citizens of Malawi, Zambia, Zimbabwe and Nigeria, as well as Asian and Arabs nationals.³⁶ It would appear that the South Africans who perpetuated xenophobia were venting their economic frustration on foreigners. If indeed those foreigners in South Africa constitute economic sabotage to South Africa, they should be prosecuted following due process. The xenophobic attack is jungle justice and is unacceptable anywhere in the world. South African citizens experience poverty and social inequality, and more than 7.2 million live with HIV.³⁷ All these cumulatively trigger xenophobic attacks on foreigners.

Reacting to attacks on foreigners, the Vice-Chancellor of the University of Johannesburg, Professor Tshilidzi Marwala, pointed out that when people face economic or social challenges, they vent their frustration on foreigners. The Vice-Chancellor condemned the looting of shops and assault on foreigners and saw it as barbaric and unacceptable under the rule of law.³⁸

2.4. Efforts by the South African Authority to Curb Xenophobic Attacks

- i. Setting up committees on xenophobic occurrences: It is not correct for any person to say that the South African government has not taken steps to curb xenophobia. In May 2008, xenophobia, the government created ad hoc committees in parliament, ministries and local government to address the xenophobic occurrences. The outcome of these committees was that these attacks were crimes and not xenophobia. The xenophobia issue became forgotten after some time, and no more actions were taken to prevent reoccurrence, as the attacks were tagged just crimes, not xenophobia.³⁹

³⁵ *ibid*

³⁶ “The Xenophobic Attacks were Targeted at Non-white Foreigners but Directed at Citizens of Malawi, Zambia, Zimbabwe and Nigeria as well as Asian and Arabs nationals” *New Telegraph* (Lagos September 11 2019) 15.

³⁷ *Ibid*.

³⁸ “The Vice-Chancellor of the University of Johannesburg Professor Tshilidzi Marwala condemned the Looting of Shops and Assault on Foreigners,” *The Guardian* (Lagos September 15 2019) 15.

³⁹ Committee on the Elimination of Racial Discrimination (CERD), General Recommendation No. 30 Discrimination against Non Citizens, 1 October 2002. Available online at: <http://www.unhcr.org/refworld/docid/45139e084.html>. Also available on the UNHCR-net at: <https://goo.gl/426O7F>

- ii. Police approach: The South African police have played some roles in stopping xenophobic attacks. The police were charged with protecting lives and properties in South Africa, with the same functions as police in other parts of the world. South Africa did not consider attacks such as looting of shops and robbery as xenophobia. The police tag such activities as just crimes. To them, referring to just crime as xenophobia was a way of tarnishing the image of South Africa.⁴⁰
- iii. The Gauteng Premier has advised South African to unite against xenophobia rather than seeing foreigners as the main problem of South Africa. He called upon the authorities to find a lasting solution to constant attacks on foreigners⁴¹.

2.5. Six Things South Africa Has Suffered Due to Xenophobia

- i. The smearing of the image of South Africa in the international arena. As a confirmation that other countries condemned South African xenophobic attacks on foreigners, some reprisal attacks occurred in Lagos, the commercial nerve centre of Nigeria. Angry Nigerian youths attacked South African businesses in Lagos. The most affected were the Shoprite supermarket locations and MTN Communication Ltd. Responding promptly, the Nigerian police proactively dispersed the protesters and mounted security around all identified South African businesses, including the DSTV communication offices. This was professionalism exhibited by the Nigeria Police Force, which the police in South Africa were expected to demonstrate.
- ii. South African president Cyril Ramaphosa was booed at the late Robert Mugabe's burial in Zimbabwe. World leaders gathered in Zimbabwe to attend the burial ceremony of Robert Mugabe. Mugabe had ruled his country for thirty-seven (37) and died at 95 years. At the event that world leaders attended, President Cyril Ramaphosa of South Africa inclusive, Ramaphosa, rose to speak at the burial ceremony. The crowd booed him and almost prevented him from speaking in protest over the xenophobic attack on Zimbabweans and other nationals living in Johannesburg, South Africa. It took the intervention of government officials who pleaded with the booing crowd before President Ramaphosa could be allowed to make his speech. As a result of the embarrassment, he apologised for the xenophobic attack in his country. He also eulogised the sterling leadership qualities of the late Robert Mugabe, whose government was toppled in 2017 following a coup de tat. Similarly, Zambian Hot FM banned playing South African music on its station.⁴²

⁴⁰ <https://mg.co.za/article/2013-05-28-diepsloot-crime-xenophobia-or-both/>

⁴¹ <http://ewn.co.za/2014/08/26/Xenophobic-attacks-in-the-spotlight>

⁴² D. Durosomi "Zambian Hot FM Banned the Playing of South Africa Music," *Sunday Tribune Newspaper* (Ibadan September 15 2019) 6

- iii. The Zambia football association cancelled the friendly match with South Africa, which was to take place in 2019 in Lusaka, Zambia. There could be reprisal attacks on the South African team with grave consequences.⁴³
- iv. African leaders boycotted the famous world economic forum billed to hold in South Africa. The prominent leaders who boycotted the event were the Presidents of Nigeria, Malawi and Rwanda. Other leaders later followed suit. This boycott was not a minor embarrassment to the South African image in the international arena.⁴⁴
- iv. The South African diplomatic mission in Abuja, Nigeria, was temporarily shut down due to the apprehension of a reprisal attack resulting from the xenophobic attack on other African nationals in South Africa. This was an embarrassment to the government of President Cyril Ramaphosa of South Africa.⁴⁵
- v. President Muhammadu Buhari of Nigeria, expressing his displeasure, sent an envoy to the South African President, Cyril Ramaphosa, reminding him of his international responsibility of protecting the lives and properties of foreigners living in his country.⁴⁶ President Buhari had ordered the evacuation of Nigerians from South Africa following the intermittent attacks on Nigerian business interests and properties of Nigerians in South Africa. The Nigerian president also sent a message through the special envoy to South Africa Ambassador Ahmed Abubakar, to the South African President, Mr Cyril Ramaphosa, expressing concern and worry over violence against citizens of the brotherly African nation. Following the presidential directive for the evacuation of Nigerians, the chairman of Nigeria Diaspora Commission (NIDCOM), Abike Dabiri Erewa, took steps, and six hundred and forty (640) Nigerians registered for a voluntary return home and two planes were chartered to bring them home.⁴⁷

The Purpose and Theme of the Research

The purpose of conducting this research, as seen from the discussion, is to bring out the importance of maintaining or sustaining the human rights upon which the survival and happiness of humanity lie. It is evident that in a military autocracy, human rights abuses were rampant, and people groaned in pain under such a dictatorial regime with little or no hope of redress because even the court is not independent in military systems. However, in a civil democracy, we still witness human rights abuses through xenophobic attacks, as exemplified in the South African environment. Researching what causes

⁴³ E. Makhaya “Zambia Football Association Cancelled the Friendly Match with South Africa.” <https://www.pulse.com.gh> >accessed 25 March 2020.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ S. Nuhu “President Muhammadu Buhari sent an Envoy to the South African President, Cyril Ramaphosa Reminding him of his International Responsibility of Protecting Lives and Properties of Foreigners Living in his Country,” *Vanguard Newspaper* (Lagos September 4 2019) 5.

⁴⁷ E. Q. Iroanusi “640 Nigerians Registered for a Voluntary Return Home” *Guardian Newspaper* (Lagos September 10 2019) 6.

xenophobia and proffering solutions to curb the challenges is necessary. The novelty of this research can be seen in the suggestions put forward in the recommendation section, which, if implemented, will prevent future xenophobia, and xenophobes will be kept in check timely. Information and knowledge are power; hence this paper is meant to call upon the South African government and the international community to take specified steps towards keeping South Africa and other parts of the world free from future xenophobia.

Recommendations

- i. South Africa should holistically implement the international and regional human rights instruments and all relevant standards that protect the human rights of all persons at risk of xenophobia.
- ii. South Africa should strengthen its law enforcement and criminal justice responses to xenophobia, including adequate training and resources availabilities;
- iii. South Africa should create a specialised national body that would build networks with civil societies to handle the xenophobic situation;
- iv. The international community should impose economic and political sanctions against South Africa, bearing in mind that xenophobic attacks have become a recurring event in South Africa. There is a need to impose economic and political sanctions on South Africa. The members of the United Nations should break diplomatic relations to compel South Africa to respect United Nations Convention on Human Rights in the spirit of *pactum sunt savanda* and as part of the *ius cogens* rule, of which South Africa is a signatory. By this measure, South Africa will realise that no nation in this world, no matter how powerful, has a right to maltreat and wantonly kill the nationals of other countries in its territory.
- v. United Nations Security Council should compel South Africa to pay reparation to victims of xenophobic attacks and also make reparation to the victims' countries. We recommend that the United Nations force the South African government to pay a fine of five hundred thousand dollars (\$500 000.00) to every victim of xenophobic attacks or the family of the murdered person. This measure will put the government of South Africa on its toes to take proactive action to curtail xenophobic attacks and bring xenophobes to book in its territory.
- vi. United Nations Security Council should compel South Africa to obey the international conventions on human rights. This could be achieved by the United Nations sending a monitoring team to South Africa to force compliance on respect for human rights. The team should be permanently stationed in South Africa to promptly monitor and report any future human rights abuses and xenophobic attacks, arrest the xenophobes, and prosecute them.
- vii. Governments of countries of the victims of the attacks should drag the South African government to the International Court of Justice (ICJ) in Hague to get justice. Suppose the home governments of victims begin to sue the South African government at the ICJ, and several millions of dollars in damages

are awarded against South Africa, the South African government will call its citizens to order regarding xenophobia. South African government cannot risk disobeying the decision of the International Court of Justice, knowing the Security Council will enforce it.

3. CONCLUSION

This article has examined how law and policy can assist in addressing cases of xenophobic attack in South Africa for human rights protection. International and Regional treaties towards promoting and preventing xenophobic attacks, including introducing policies aimed at addressing the consequences of xenophobic attacks, have been assessed, along with the environmental effects and human rights regime. This regime is pivotal in promoting and protecting human rights in South Africa through government policies and regulatory frameworks. In this regard, the authors emphasised that there is no doubt that these well-thought-out suggestions, if well implemented by the international community and South African government, the issue of xenophobia and other human rights challenges will be addressed. Also, the recommendations advanced in this article by the authors may provide better security and protection of human rights of non-nationals in South Africa and protect lives and properties. Countries whose nationals were victims of xenophobia will heap sigh of relief if the UN sanctions South Africa. The wanton killing and destruction of properties and business interests of foreign nationals in South Africa will become a thing of the past. All hands must be on deck. These scornful and mournful incidences of xenophobic attacks must be dealt with decisively in whatever ways it demands by the international state actors. This is a time of proactive action, and no Country should be left out of this campaign against xenophobia. With concerted efforts, xenophobic attacks will be eliminated in South Africa and everywhere around the globe.

In sum, the legal analysis above demonstrates that both the International community's interpretations of the various Human Rights Treaties and the South African Constitution, which provide for human rights protection, have no direct or explicit support either in wording or in case law of the court, xenophobic attack on non-nationals

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