

TO LEAVE OR TO DIE? REFUGEES PROTECTION IN SOUTH AFRICA IN THE FACE OF XENOPHOBIC ATTACKS*

Abstract

Every story is about a past event, experience, or perhaps life's ambition. However, finding safety, tolerance and protection of fundamental human rights is of paramount importance to a refugee in South Africa. The wave of xenophobic attacks that broke out in various part of South Africa over the past years caught most people unaware. In fact, we are still finding it difficult to come into a reality that this happened in a country which is worldwide considered to be a role model of reconciliation. At the end of apartheid in South Africa, we expected peace, stability and respect for human rights to reign and it did for a while until xenophobic attacks began and since then at least 15 xenophobic attacks has occurred with mainly African immigrants been the casualties. A lot has been said and written on the issue of xenophobia in South Africa but not enough has been written on how to curb these inhuman practices and how refugees in South Africa should be protected in the wake of these attacks. This paper explored the explanations, nature and practices of xenophobic attacks in South Africa. It further explored the status and protection of refugees in South Africa in the face of these xenophobic attacks. Some recommendations on how to curb these xenophobic attacks on foreign nationals especially refugees in South Africa are also outlined.

Keywords: Xenophobia, Refugees, Immigrants, Protection, South Africa.

1. Introduction

The xenophobic brutality originates from fear and anger by the local South Africans that are of the view that their positions, ladies, and assets are under threat by the arrival of foreign nationals. There is a widespread misinterpretation in the country that all immigrants are 'illegal' and, in this manner, a danger to the flourishing but insecure democratic rule in South Africa. It will be valuable to explain the terms used in this paper in alluding to different foreign nationals. An 'asylum seeker' alludes to an individual who is currently applying for asylum or refugee status. The expression 'refugee' is intended to allude to an individual who has just been granted refugee status. Now and again, 'refugee' is additionally used as a term to signify all individuals who have left their country of origin because of oppression or political change.

Fear of the unknown is something one can witness all over the world, and as the movement of people has accelerated with new technologies of transport and communication so has the fear of strangers. This fear of strangers is what we call xenophobia. It derives from two Greek words: *xénos* and *phóbos*, meaning 'stranger' or 'guest' and 'fear', respectively¹. Consequently, xenophobia means fear of the guest or the stranger, though today it has the stronger meaning of hatred of strangers. The South African Human Rights Commission (SAHRC) defines xenophobia as 'the deep dislike of non-nationals by nationals of a recipient state'². It is important to bear in mind that xenophobia is more than just an attitude towards foreigners which also take the shape as a practice and subsequently turn into violent behavior³. Fear is at the premise of refugee law in principle as well as in definition. In view of customary international law, a refugee has the right to look for shelter in another country when they have a fear of mistreatment. Protection of refugees in Africa is found in both the 1951 United Nations Convention Relating to the Status of Refugees⁴ and the 1969 Organization of African Unity Refugee Convention Governing the Specific Aspects of Refugee Problems in Africa.⁵ Locally, refugees are qualified for protection by the South African Bill of Rights and the Refugees Act of 1998. In any case, the broad gap

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¹ J. Bordeau, *Xenophobia: The Violence of Fear and Hate*, (2010), New York: Rosen Publishing Group.

² S. Bekker, 'Explaining violence against foreigners and strangers in urban South Africa: outburst during May and June 2008', (2010), in Yusuf, A.A. (ed.).

³ B. Harris, 2002. *Xenophobia: A new pathology for a new South Africa?*, (2002), in Hook, D. & Eagle, G. (eds.).

⁴ The 1951 Refugee Convention relating to the status of refugees.

⁵ The 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa.

between refugee law in principle and in practice in South Africa sadly brings about numerous refugees not encountering the rights and protection ensured to them. UNHCR observes that:

Calling people derogating names is one way that xenophobia shows its ugly face. Harassment, hostility and violence are some of the other serious consequences of xenophobic attitudes in South Africa. Most victims of xenophobia are black African foreigners. Xenophobia is caused by ignorance and intolerance. Poverty, unemployment and crime in South Africa today make xenophobia worse because many people are competing for scarce resources. South Africans tend to blame black foreigners for the social and economic problems of the country.⁶

Xenophobia is also a psychological state of the mind and being uncomfortable with anything different and has been used to engage in politics of exclusion and discrimination. Sisulu contends that the manifestation of xenophobia in South Africa by nationals can be credited to the inability of the populace in facilitating refugees and other non-nationals⁷ especially those from other African nations. According to her, South African society has not been adequately educated on the issues of refugees, the reasons for refugee mobility and government's obligations towards refugees. She maintains that the issue of xenophobia is exacerbated by the disarray made in separating refugees from other foreign immigrants as well as economic impoverishment of the majority of South African citizens who consider the presence of refugees as a danger to their occupations, food, education and different luxuries given by government. All things considered, refugees and asylum seekers may be more defenseless against assaults and may be exposed to segregations because of Xenophobia⁸ as they are portrayed as a burden and parasitical to the state.

Xenophobia encourages corruption, violence and bars access to public health, education and other social services which refugees and asylum seekers are entitled. Often, xenophobic attitudes by host communities create obstacles for participation in public life, which often results in psychological and practical barriers to full integration⁹. Rutinwa argues that one of the causes of xenophobia is the failure of the public to appreciate the special situation of refugees¹⁰ and the contributions they can make in the society. On the other hand, Harris noticed that xenophobia arises as a result of struggle for space and opportunities between the citizens and foreign nationals in the new South Africa.¹¹ The predicament of refugees highlights the issues of corruption in government, cooperation among civil society, attitudes dependent on obliviousness, and a general public that cannot yet back away from the shadow of apartheid. This paper describes the issues encompassing xenophobia, the gap between refugee law and refugee reality in the country, and the efforts that have been taken thus far to improve the situation.

2. The Nature of Xenophobia in South Africa

Xenophobic attitudes are those which are held against a group of individuals exclusively based on this group's other nationality. Xenophobic behavior comprises actual acts coordinated towards a group, again exclusively in light of the fact that individuals from this group comes from different nationalities. This behavior can regularly be fierce. It is important to include actual behavior because xenophobia often plays out in South Africa in a violent manner and it makes it a grave problem. It is additionally essential to remember that these activities are not just done by individuals from general society; state authorities have likewise done xenophobic assaults. Another aspect of South African xenophobia has to do with whom it normally targets. There were no episodes where white foreigner had been focused on, aside couple of occurrences where Asian foreigners were focused on. The group that is focused on

⁶UNHCR, working to protect refugees in South Africa: UNHCR Publications 2000.

⁷ L. Sisulu, 'Meeting the Challenges of Forced Migration in Majodina Zonke', (2001), *The Challenges of Forced Migration in Southern Africa*.

⁸ J. Handmaker, 'Who Determines Refugee Policy? Promoting the Rights of Asylum in South Africa', (1999), *International Journal of Refugee Law*, Vol.11 (2)209-309.

⁹ S. Motha, *Forced Migration and Social Integration in A Host Community: A Study of Ekulindeni Village, Mpumalanga In South Africa* (2003), University of the Witwatersrand. p20.

¹⁰ B. Rutinwa, 'The End of Asylum? The Changing Nature of Refugee Policies in Africa', (2002), *Refugee Survey Quarterly* Volume 21. no.1 & 2. p36.

¹¹ B. Harris, 'A Foreign Experience: Violence, Crime and Xenophobia during the South Africa's transition', (2001), *Violence and Transition series*, Vol.5.

is primarily other black Africans¹². At the point when xenophobia was characterized in the introduction it was said to depict ‘the profound abhorrence of non-nationals by nationals of a beneficiary state’. The issue with this definition is that it suggests that xenophobia is a state of the mind or a perspective, yet this phenomenon goes beyond what it is in South Africa. As expressed above, activities coming about because of this ‘hate’ should likewise be incorporated. That is why both xenophobic attitudes and the practices have been looked at. Harris (2002) contends that another meaning of xenophobia in South Africa should to be embraced. Besides, she contends that this definition should not just incorporate the act of the xenophobic perspectives but in addition consider who is being targeted, since a more open definition will incorporate every single foreigner-group.

South Africa has seen nonstop protest all through the nation, particularly with regards to service delivery. These protests regularly incorporate the blocking of significant streets, the throwing of rocks, and so on and people’s lives were lost because of battling the uproar police. A huge number of these protests do not make the news, albeit significant streets may have been closed down. Parks Kaiyane, a local activist interviewed by Al Jazeera, said the following: ‘When people protest and burn tyres, and blood is shed, that is when you get a response. When you call a meeting and speak to them [local officials], it’s like you’re speaking another language. But when you burn tyres, that language is understood.’¹³ This infers that brutality is seen as the best method of being heard. The local government specialists have neglected to give the participatory democracy that was guaranteed the people, thus protest, frequently savage, and have become the way for underestimated individuals to voice their complaints¹⁴. This viciousness is organized through the manner in which the police react to protest, both by giving a savage reaction themselves, and through not responding and permitting savagery to proceed. South African culture has seen violent responses throughout its history, and xenophobia has become another type of brutality in the democratic era. A vicious history is not restrictive to South Africa. Most, maybe all, African nations have vicious accounts, but African foreigners in South Africa have been shocked by the degree of this brutality. Truth be told, huge number of the settlers came to South Africa to get away with fighting and violence in their country of origin, and do not wish to utilize violence as an answer to this problem. In this way, to accuse the savagery for history is not adequate in itself. Violence has been grasped by components of South African culture to the point that to qualify as newsworthy, a certain level of violence must be met. Xenophobia has been introduced as pathology because it is not a solid component of the new and democratic based South Africa. Xenophobia is viewed as something negative and strange; it is not important for the peaceful society. However, in South Africa violence cannot be isolated from normal society.

3. Refugees as Objects of Xenophobic Attacks in South Africa

In the declaration of Uniting Reformed Church in Southern Africa (URCSA) on the xenophobic attacks¹⁵ under the heading ‘There is no room in the inn’, we find the following statements: Since the dawn of democracy in South Africa, many people from other parts of our continent flocked to this land. They saw a bright new future arising on the horizon of Africa’s last oppressive colony. They felt they could share it with their brothers and sisters in South Africa. They fled their own troubled countries to make a new beginning. They became refugees among us, people without legal status, stateless people. Their refugee status ranged from political to economic refugees. The sad twist in the refugee tale is the hostility and xenophobia that they endure. Looking at the South African history, a history where at some point many South Africans were refugees themselves in some of these countries, one would have reasonably expected that such history of firsthand struggle and statelessness would have formed a guiding compass in their treatment of refugees. But shameful, the reality remains that many a time South Africa citizen regard these refugees as nuisance, hurting them physically and emotionally. Refugees are seen as people taking ‘their jobs.’ This kind of behavior against refugees stands to their

¹² B. Harris, ‘Xenophobia: A new pathology for a new South Africa?’, (2002), in Hook, D. & Eagle, G. (eds.). *Psychopathology and Social Prejudice*. Cape Town: University of Cape Town Press: 169-184

¹³ *ibid*

¹⁴ N. Niefertgodien, ‘Xenophobia’s local genesis; Historical constructions of insiders and the politics of exclusion in Alexandra township’, (2011), in Landau, L.B. (ed.). *Exorcising the demons within: Xenophobia, violence and statecraft in contemporary South Africa*. Johannesburg: Wits University Press: 109-134.

¹⁵R. Osmer, *Practical theology: an introduction*, (2008), Grand Rapids, Michigan: Eerdmans.

discredit as a people. Recently people were shocked into the reality of the hardships that refugees must endure in South Africa by the death of a Zimbabwean citizen. He died of hunger while he was struggling for weeks in an unending line in front of the Home Affairs Offices in Cape Town to get temporary resident status, so that he could belong. He came for freedom from the woes of Zimbabwe, but he found death in a cruel and inhumanely way. These few words encompass various basic aspects regarding the incidence of xenophobia.

4. Protection of Refugees in South Africa with regards to International Law

The government is likewise bound, legitimately and ethically, to a number of international conventions and treaties. As indicated by Article 1 of the 1951 UN Convention on the Status of Refugees, the term refugee applies to any individual who, inferable from very much established fear of being persecuted for reasons of race, religion, identity, participation of a specific social group or political affiliation is outside the country of his ethnicity and cannot or attributable to such fear, is reluctant to avail himself of the security of that nation; or who, not having an identity and being outside the country of his previous constant home because of such occasion, cannot, or attributable to such fear, is reluctant to return of it. Refugees enjoy first and foremost the protection afforded them by refugee law and the mandate of the Office of the United Nations High Commissioner for Refugees (UNHCR). On the off chance that they are in a State associated with an armed conflict, refugees are additionally secured by international humanitarian law. Aside from the overall protection managed by international humanitarian law to regular people, refugees likewise get extraordinary protection under the Fourth Geneva Convention and Additional Protocol I. This extra protection perceives the weakness of refugees as aliens in the hands of a party to the conflict and the absence of protection by their State of nationality. Article 4(a) of the International Convention on the Elimination of All Forms of Racial Discrimination, to which South Africa is a signatory, requires States Parties to proclaim, among others, an offense deserving of law, all dispersal of thoughts dependent on racial prevalence or scorn, instigation to racial segregation, just as demonstrations of violence or affectation to such acts against any race or group of people of another color or ethnic cause. The International Covenant on Civil and Political Rights (1960) ensures migrants various fundamental rights, including: the right to life; to not be exposed to torment, or merciless, barbaric or debasing treatment or discipline; to the freedom and security of individual; to freedom of movement; to the opportunity to choose ones habitation for those lawfully within the territory of a state; and to the right to protection from subjective or unlawful impedance with their entitlement to protection. The covenant likewise expresses that migrants legally within the region of a state might be ousted distinctly in pursuance of a decision as per law.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) ensures key rights to laborers and their families, just as uniformity under the Courts and Tribunals and to treat migrants' workers not less well than nationals in regard to remuneration for employment and conditions of work in terms of employment. Emergency medical consideration and essential education are likewise ensured and ordinary migrant workers are to reserve the right to vote.

5. Recommendations for the Protection of Refugees in the face of xenophobic attacks in South Africa

A positive thought in the area of refugee law is that South Africa seems willing to incorporate international conventions on refugees into its domestic policy. One of the main concerns for improving the immigration system and avoiding similar outbreaks of violence in the future is that the effects of refugee legislation 'have not cascaded down to the grassroots level where refugees share a livelihood with South Africans.' Immigration reform and correct implementation of new policies must be done amid a public in dire need of civil education. It is within this context that the paper proposes the following long-lasting measures that need to be considered by authorities for comprehensively dealing with the protection of refugees in the face of xenophobic attacks in a sustainable manner.

Reforming the Legal Framework

Recognizing the role an effective and efficient rule of law stands to play, on a miniature level, it would help forestall future attacks, while on a large scale level, the country would have the option to meet the

essential fundamentals of provincial collaboration, for example, tolerance and acknowledgment of non-citizens.¹⁶ The first step in the process of creating a more tolerant nation is reforming the legal framework around which the refugee system works. There is a requirement for a more straightforward, dependable, expedient process. The Department of Home Affairs (DHA) needs to keep on improving its administrative systems to make them more proficient. The Refugees Amendment Bill is a decent beginning to smoothing out the application and appeals processes. Regulatory enhancements are fundamentally connected to the abatement in the xenophobic culture in South Africa. On the off chance that refugees are less vulnerable against misconceptions in the minds of local residents and police, at that point there will be more space for comprehension of what displaced individuals have suffered and their explanations behind being in the country. It will turn out to be clearer that refugees those still bearing the moderate and stressful process of applying for refugee status are as anxious to add to the South African culture as South Africans seem to be.

Public education and awareness campaigns

Xenophobia has become another elephant in the room that can no longer be ignored. Adequate awareness and education on the forms and manifestations should be advocated through every available platform. It is not uncommon to hear South African citizens try to explain xenophobic acts ignorant of course, that such acts are xenophobic. Severally there has been mention of ongoing reforms to combat several intolerances including xenophobia. However, there is a need for proactive steps and means of implementations to be clearly stated especially realizing that the problem goes beyond weak legislation and lack of implementation strategies. This subtle move should thus be encouraged. One of the focal systems for dealing with the rates of xenophobic savagery against foreign nationals is to increase public education and awareness campaigns by government on the privileges of foreign nationals in South Africa. Regarding Section 29(2) (e) of the South African Immigration Bill, one of the elements of the Department of Home Affairs is to educate communities and civil society on the rights of displaced people, foreigners, and unlawful foreigners, just as to direct activities to forestall xenophobia. These awareness campaigns are fundamental in cultivating a basic human rights culture within the South African culture. South Africans can figure out how to make the distinction between unlawful immigrants and refugees. This will be particularly clear once administrative divisions do their part to affirm refugees' status through more proficient paper work procedures. Additionally, there should be more collaboration between the Government and community leaders so civilian do not feel they need to go rogue. South Africans should not see immigration as far as populace numbers or statistics on race, religion, clan or country of origin nation. These numbers are risky whenever seen without the accompanying education to clarify what they mean. All things considered, immigration should be presented to the South Africans regarding the advantages that immigrants and refugees can give to their new community. Educating individuals in the township and communities about the advantages of immigration will begin to gradually diminish the angry light in which immigration is seen. South Africa has the steadiest economy in Africa and one of the most liberal Constitutions on the planet with regards to human rights. Esteeming the abilities that refugees and asylum seekers bring to the country and permitting them to legitimately look for work and studies without experiencing a vicious hindrance will improve the financial infrastructure for all every South African. The way toward teaching tolerance will be moderate and only one out of every mind will be changed, yet education is the way to opening the obliviousness that creates the fear.

Facilitating the integration of foreign nationals within communities

As soon as the culture of human rights and tolerance has been adequately cultivated and is profoundly settled within communities that have been noted as 'hot spots' of xenophobia, it is significant that efforts to encourage their integration should start. Notwithstanding, the help of the integration of foreign nationals within communities is a cycle that should not be rushed. That is, specialists should not rush to adopt re-integration of immigrant back into local communities without initially managing exhaustively, thoroughly and economically with the issues that started the violence in the first place.

¹⁶ N.Hopstock & N. de Jager, 'Locals Only: Understanding Xenophobia in South Africa', (2011), 33(1) *Strategic Review for Southern Africa* 120, 121.

Monitoring and Punishment of Corrupt Government Officials

A specific measure of control must be infused into the Government at all levels. Police must be better prepared to perceive asylum seekers permit and foreign status papers so they will not wrongly arrest or detain refugees. Officers should also be punished for any bribes or other unlawful acts they request. The DHA's Turnaround Strategy, related to the National Intelligence Agency, is pointed toward educating DHA authorities and managing those discovered starting or taking bribes. For the upper level of Government, including the President, Parliament and elected authorities, it is their obligation to make South Africa want to be a country that treats its foreigners well, regardless of whether those foreigners will actually be repatriated to their countries of origin nations. The Government cannot be submissive in the wasteful process of documenting asylum applications simply because in light of the fact that they would prefer not to manage the refugees once they become an obligation of the State. Government must set the model in being inclusive to those in need of protection. The South African Constitution is excessively inviting to humankind for the Government not to respect the rights ensured to everybody within South Africa and it is Government's obligation to implement these rights.

The Heritage of Apartheid must not be blamed for the Unacceptable Xenophobic Attacks

There should be a steady and in general move in South Africa's isolated and selective culture. To achieve this, there should be a move away from apartheid racial segregation once and for all. There has been a lot of conversation connecting apartheid racial segregation to the recent savagery. Be that as it may, we should discover another reason. In this regard, former South African President, Frederick Willem De Klerk contended that the legacy of apartheid racial segregation was not to fault for the 'unacceptable' xenophobic attacks, yet rather high employment rate among black South African, the preparation to accuse apartheid racial segregation energizes the battles to go after poverty, underdevelopment, marginalization, social exclusion and economic disparities. Post-apartheid socioeconomic struggles may help explain the closed society that foreigners encounter in South Africa, but they are no justification for the violence. The advantage for South Africa in managing these issues is that the Government is not, at this point dependent on racial divisions. Apartheid Government was a form of 'absolute racism,' though the current Government exhibits just 'political racism,' in which race and ethnicity become focal issues but are not a piece of conscious policy.

6. Conclusion

Xenophobia is a pivotal issue that urgently should be addressed. It targets groups in the society that are vulnerable causing them to live in the constant fear of violence, often from the institution that should protect them. Despite the fact that it is justifiable to ask somebody what country they came from, refugees feel rejected when they are continually interrogated concerning when they are 'returning.' The idea of full integration within South African society can put both foreigners and locals on edge. Asylum seekers who cannot get protection or the individuals who although have acquire refugee status are still dismissed by employers may resort to criminal acts, fortifying the generalization that all immigrants are linked to an increase in crime rates. In any case, a genuine comprehension of the refugee story is still absent. Furthermore, the associations that can be weaved together in the arrangement of government and civil society cooperation have not been completely seized Asylum seekers and refugees do not relocate by decision and are not motivated by a craving to take occupations and engage in drugs and crime. They come to South Africa to find safety and harmony, at least temporarily. With solid initiative, administrative and lawful changes, South Africa can turn into the democratic safe house of wellbeing that has caught the fantasies and any desires for so many. This vision of eradicating xenophobia in the country will take a long achieve. It may take considerably more for the Government to commit itself to ending corruption or for the international communities to fortify refugee law to adjust to current humanitarian crisis. Yet, on the off chance that South Africa can advance a culture of civil education, with the help of Government and humanitarian organizations, the country will in the end discover its way through the fear. In a South Africa that more closely resembles its reputation as a land of hope and democracy, citizens will not have to be angry towards foreigners and refugees from neighboring African countries will be able to find their long- anticipated tolerance.