

To

Adv. Faith Pansy Tlakula

Chairperson

African Commission on Human and Peoples' Rights

31 Bijilo Annex Layout, Kombo North District

Western Region, PO Box 673

Banjul

The Gambia

9 March 2017

Honourable Chairperson,

Re: Recurrence of xenophobic attacks in South Africa

We, the undersigned civil society organisations write to you to raise concerns about the continued recurrence of xenophobic attacks against non-nationals living in the Republic of South Africa. In the past, we approached the Commission with similar concerns highlighting the need to impress on the government of South Africa to end xenophobic attacks perpetrated against non-nationals living in the country. As human rights organisations, we are particularly concerned about the absence of appropriate and practical action including the lack of serious interventions, poor policy response and inappropriate action by the government of South Africa to stop the recurrence of these attacks. We are also concerned about the limited responses by the criminal justice system to deal with the arrest and prosecution of perpetrators. We believe that the government of South Africa should undertake practical and policy measures to address the root causes of these attacks including addressing its social and economic obligations in order to meet the country's constitutional, socio-economic and human rights obligations.

South Africa has experienced large scale xenophobic violence on numerous occasions.¹ In February 2017, parents reported that xenophobic prejudice was being extended to local schools.² Markedly, the Eastleigh Primary School in Edenvale, Gauteng, issued a letter to all foreign parents threatening to refuse their children access to education and to have children arrested if their papers are not in order. Targeting children for the purposes of immigration enforcement is a grave concern. Children must never be detained for immigration purposes. And all children in South Africa are equally entitled to education regardless of their immigration status or documentation. To this end, the South African Schools Act prohibits discrimination of any form when it comes to admission to school.

We believed that the notice given to parents by the Eastleigh Primary School were linked to the violent attacks against refugees, migrants and asylum seekers during February 2017. While the exact number of people affected by xenophobic attacks in South Africa is not known yet, there is need to take action to end these prejudicial and intolerant practises. We recall that between 2000 and 2008 close to 67 people died due to what became identified as xenophobic attacks in South Africa.³ In May 2008, 62 people were killed and 600 injured as a result of xenophobic attacks.⁴ Twenty-five of those killed were South Africans who were believed to be non-nationals. Since 2009, the number of attacks against refugees and migrants in South Africa escalated. At least one attack occurs annually. In April 2015 at least 5 people died and about 5000 others were displaced when there was an outbreak of xenophobic attacks in the KwaZulu Natal province. As in the past, these attacks caused loss of lives, injury, loss of livelihood and irreparable damage to property.

We note statements and requests from several governments of foreign communities resident in South Africa to provide assistance to individuals leaving the country. While those who wish to leave should be assisted to do so, we reiterate that the solution to the xenophobic violence should not be

¹ For example, in May 2008 more than 60 people were killed, more than 600 injured and over 20 000 people were displaced in the Gauteng and Western Cape Provinces, according to Amnesty International's report, "Talk For Us Please" published in September 2008. Available at: <https://www.amnesty.org/en/documents/afr53/012/2008/en/>

² See details at <http://www.lhr.org.za/news/2017/joint-press-release-%E2%80%93-eastleigh-primary-school>, (accessed 3 March 2017).

³ See CSOs open letter to the African Commission regarding xenophobic attacks in South Africa, available at <http://www.southernafricalitigationcentre.org/2015/04/23/open-letter-to-the-african-commission-regarding-the-xenophobic-attacks-in-south-africa/>, (accessed 23 February 2017).

⁴ As above.

to repatriate non-citizens, but to ensure an environment in the country in which their rights are respected and protected.

In the context of South Africa, historical racial categories still dominate the public imagination, often obscuring the link between xenophobia and ethnic prejudice. This connection is clearly demonstrated by the victimisation of national minorities and the deaths of 25 South Africans during the 2008 xenophobic attacks. As a form of ethnic prejudice, xenophobia often claims justification from immigration laws; hence, stereotypes reduce all members of the ethnically, linguistically or culturally different group to “illegal migrants” regardless of their actual immigration status.⁵

We expressed similar concerns about xenophobic attacks in 2015, when more than 100 civil society organisations (CSOs) and concerned individuals addressed an open letter to the Commission asking the Commission to impress on the government of South Africa to take measures to curb the problem.⁶ In it, we highlighted to the Commission the dire impact that such violence and lack of tolerance has on the safety of foreign nationals. We reiterate our position and add that, refugees and migrants living without adequate protection from violence against them and in a prevailing culture of impunity for such acts, risk facing gross violations of their fundamental human rights. In addition to the loss of life, xenophobia places foreign nationals at an increased risk of abuses including hate crimes, which are violent manifestations of intolerance and have a deep impact not only on the immediate victim, but the group with which victims identify themselves. Such crimes affect community cohesion and social stability. A vigorous, adequate and effective response is, therefore, important both for individual and communal security.

We recall the African Commission’s response to our open letter referred to above when it issued Resolution 304⁷ calling upon the government of South Africa to take the necessary measures to

⁵ Report on the SAHRC Investigation into Issues of Rule of Law, Justice and Impunity arising out of the 2008 Public Violence against Non-Nationals http://pmg-assets.s3-website-eu-west-1.amazonaws.com/docs/101124sahrcprep_0.pdf, (accessed 3 March 2017).

⁶ See 2015 Open letter to the African Commission regarding the xenophobic attacks in South Africa, available at <http://www.southernafricalitigationcentre.org/2015/04/23/open-letter-to-the-african-commission-regarding-the-xenophobic-attacks-in-south-africa/>, (accessed 3 March 2017).

⁷ Full text of the Resolution available on website of the African Commission on Human and Peoples’ Rights at <http://www.achpr.org/sessions/56th/resolutions/304/>, (accessed 3 March 2017).

ensure that the rights of all migrants are protected in accordance with the applicable international and regional human rights instruments. The Resolution also urged South African authorities to take all the necessary steps to end the violence against refugees, migrants and asylum seekers, investigate the circumstances leading to the xenophobic attacks and to bring to justice the perpetrators of the attacks. In essence, these recommendations aimed to hold South African authorities to account to their obligations under the African Charter and other international and regional treaties. The 2015 Resolution of the African Commission remains relevant to the current situation in South Africa.

The relatively recent attacks against non-nationals which occurred in February and March 2017 in Pretoria shows that much needs to be done in order to stop these deadly and persistent attacks against foreign nationals. It is evident that further action needs to be taken to address xenophobia at the community level including by carrying out campaigns aimed to raise awareness and educate the public about the negative effects of xenophobia, protect potential victims and make clear that such harmful practices are unacceptable.

We urge the Commission to:

- Issue an urgent appeal asking the South African government to take urgent measures to protect non-citizens in the country as obligated under regional and international human rights treaties to which it is a party;
- Raise the above and other concerns relating to the attacks on refugees, migrants and asylum seekers with the South African government during the Commission's planned promotion mission to the country; and
- Remind the South African Government of its international and domestic obligations to ensure that every individual enjoys their rights to life and dignity regardless of their ethnicity or migration status.

We also urge the Commission to call on the South African government to:

- Implement all the provisions of Resolution 304 and to report to the Commission on the steps taken to implement those provisions;

- Recognise and strengthen those policies and laws which will promote tolerance and cater for appropriate sanctions for perpetrators of xenophobia;
- Investigate and bring to justice perpetrators of xenophobic attacks in fair and transparent trials;
- Put in place appropriate and practical socio-economic and other measures to address the root causes of xenophobic attacks; and
- Ensure adequate protection for all refugees, migrants and asylum seekers in South Africa; and

Signed by the following organisations working on human rights issues on the African continent:

1. Southern Africa Litigation Centre, South Africa;
2. Humanitarian Information Facilitation Centre (HIFC), Zimbabwe;
3. Khulumani Support Group, South Africa;
4. Children's Dignity Forum, Tanzania;
5. The Paralegal Alliance Network, Zambia;
6. Southern African Christian Initiative, Namibia;
7. Masimanyane Womans Support Centre, South Africa;
8. Communities Holistic Initiative for Social Advancement, Malawi;
9. Centre for Human Rights Education, Advice and Assistance, Malawi;
10. Equal Education Law Centre, South Africa; South Africa;
11. Centre for Human Rights and Social Advancement, Nigeria;
12. Associação OMUNGA, Angola;
13. Centro dos Direitos Humanos da Universidade Eduardo Mondlane, Mozambique;
14. Namibia Women's Health Network, Namibia;
15. Section 27, South Africa;
16. Ladder for rural development organization, Malawi;
17. MBAKITA, Angola;
18. Association of Human Rights Organizations, Uganda;
19. SAfAIDS, Zimbabwe;
20. Mozambican Bar Association's Human Rights Commission, Mozambique;
21. Zambia Alliance of Women, Zambia;
22. Zimbabwe Human Rights Association, Zimbabwe;
23. WoMin African Alliance, South Africa;
24. Zimbabwe Lawyers for Human Rights, Zimbabwe;
25. Centre for the Study of Violence and Reconciliation, South Africa;
26. Lawyers for Human Rights, South Africa;

27. Legal Resources Foundation, Zambia;
28. Legal Assistance Centre, Namibia;
29. Women and Law in Southern Africa, Zambia;
30. International Community of Women Living with HIV in Zimbabwe, Zimbabwe;
31. Independent Advocates for Children, Adolescents and Young people in Zimbabwe, Zimbabwe;
32. Legal Resources Centre, South Africa;
33. Corruption Watch, South Africa;
34. Child Rights Advocacy;
35. Institute for Security Studies, South Africa;
36. Crisis in Zimbabwe Coalition, South Africa;
37. ProBono.Org, South Africa;
38. Zimbabwe Human Rights NGO Forum, Zimbabwe;
39. Pan African Positive Women's Coalition, Zimbabwe;
40. African Men for Sexual Health and Rights, Senegal;
41. Lawyers against Abuse, South Africa;
42. International Alliance on Natural Resources in Africa, South Africa;
43. Africa Legal Aid, The Netherlands;
44. COSPE, Swaziland;
45. Centre for Applied Legal Studies, South Africa;
46. Centre for Human Rights, of the University of Pretoria, South Africa;
47. Socio-Economic Rights Action Programme, Nigeria;
48. Institute for Human Rights and Development in Africa, Gambia;
49. Action for Southern Africa, United Kingdom;
50. Amnesty International;
51. Sonke Gender Justice, South Africa;
52. International Commission for Jurists;
53. Human Rights First Rwanda Association, Rwanda;
54. Child Rights Advocacy & Paralegal Aid Centre, Malawi; and
55. Paralegal Advisory Service Institute, Malawi.