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WATCH

“They Have Robbed Me of My Life”

Xenophobic Violence Against Non-Nationals in South Africa



“They Have Robbed Me of My Life”

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Summary

“Jean,” a Congolese shop owner, received a disturbing call on the night of September 2, 2019. On the other end of the line was his landlord, a South African, who told him that rioters had broken into his shop in Johannesburg. Jean promptly headed to his shop, where the violence was still ongoing. The rioters chased him away from his shop, threw stones at him, and forced him to flee. He counted himself lucky to escape unscathed, unlike his experience in a similar situation in 2008 when rioters beat him, and he sustained serious injuries. Reflecting on his experience, Jean told Human Rights Watch, “I am not feeling happy even though I am alive. I am trying not to be so angry, but I am so angry.”

Another man in Johannesburg, “Syed,” a Bangladeshi shop owner, pointed at a row of shops ransacked by mobs during the same violence in September 2019. Over 1,000 Bangladeshi shops were looted, he said, by mobs estimated to be 300-500 people. Syed called the South African Police Service (SAPS), but he said they did not show up until the third day, forcing him and other shop owners to stand guard over the shops, without sleep, day and night, for three days, as the mob threw stones and other objects at them.

“Nathalie”, a grade-10 student at a public school in Cape Town, who came to South Africa in 2009 with her family from the Democratic Republic of Congo paid a heavy price for being elected class monitor. She was severely beaten on August 27, 2019 by fellow students who thought a non-national was undeserving of being elected to such a position. She spent nine days in the hospital because of her injuries. Education authorities took no action because, according to them, the offending students expressed remorse and taking further action would, in their view, inflame tensions. When this report was finalized in August 2020, Nathalie had still not returned to school out of fear, as her attackers are still attending the school but have faced no consequences for attacking her.

The violent mobs who destroyed Jean’s and Syed’s shops were made up of Black South Africans who are angry at the economic and living conditions they are experiencing – poverty and inequality, chronically high unemployment, high crime rates, and poor public services. They are directing this anger at African and Asian foreigners who they believe are taking jobs and livelihoods away from South Africans. Mobs also blame non-South African nationals for the high levels of crime and, as Nathalie's brutal experience demonstrates, the demonization of foreigners, in particular other Africans and Asians, now permeates beyond disillusioned adults to their children.

In March 2019, the South African government launched its National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance (NAP). Among the actions the NAP identifies to be taken to combat xenophobia, are creating mechanisms to ensure foreigners receive services they are entitled to, facilitating their integration, and embracing a humane and dignified approach to managing migrants, refugees, and asylum seekers. However, as the incidents documented in this report show, implementation of the NAP should include steps that could quickly and effectively improve accountability for perpetrators of abuse motivated by xenophobia and justice for its victims. Potential measures include creating a dedicated portal or contact for non-South African nationals to report xenophobic incidents and standardizing how instances of xenophobia are recorded and responded to across provinces, stations, and community policing structures. This report documents some of the large scale and more individual experiences of xenophobia, discrimination, and barriers experienced by non-nationals in the year following the launch of the NAP, as well as the, at best, anemic response by the government.

Based on interviews with 51 people in Western Cape, Gauteng, and KwaZulu-Natal provinces, this report documents xenophobic harassment and attacks by South Africans, including government and law enforcement officials, between March 2019 and March 2020. In that period, mobs of angry rioters throughout South Africa have attacked and harassed non-nationals, blaming them for unemployment, crime, neglect by the government, among other things. In September 2019 in Western Cape, Gauteng, and KwaZulu-Natal, hundreds of people believed to be South African organized a national shutdown, blocking roads and highways; closing taxi ranks, schools, and businesses; and chanting for all foreigners to leave. The shutdown turned violent with mobs looting and torching homes, shops, and malls owned or rented by non-nationals. The government has said 12 people, 10 of whom were South Africans, died during the September 2019 unrest. However, Human Rights Watch's research, based on interviews with shop owners, community leaders, teachers, students, truck drivers, lawyers, civil society organizations, academic scholars, and credible media reports, indicates a higher number of fatalities for both foreigners and South Africans.

In addition to being targeted by mob violence, non-nationals whom Human Rights Watch interviewed for this report said they have been harassed verbally and physically by South Africans for being foreign and not using local languages in their daily interactions, including while walking on the street. A common and hurtful insult thrown at foreigners is the label "*kwerekwere*," a derogatory and slang word used by Black South Africans to mean "foreigner."

Foreigners also reported to Human Rights Watch that government and law enforcement officials throughout the country have used counterfeit goods raids as a cover for xenophobic harassment and attacks. These raids are conducted by SAPS and Metro Police, but local civilians whose roles are to identify counterfeit goods routinely accompany them. A common practice is to storm shops suspected of selling counterfeit goods with the goal of destroying or removing such goods from the market. Non-nationals told Human Rights Watch that they believe their shops have been disproportionately targeted by authorities conducting counterfeit goods raids. Sometimes, they said their shops have been completely destroyed in the raids and police officers have beaten them and fired tear gas and rubber bullets on them. The government claims that counterfeit goods raids protect the local economy and South African jobs, but sellers told Human Rights Watch that the police have sold confiscated goods back to them after ransacking their shops in Johannesburg Central Business District and Diepsloot. SAPS, Metro Police, and Department of Home Affairs representatives also try to approach suspected foreigners unaware, or enter their homes to verify their documents and legal status, in what are known as documentation raids. During and after documentation raids, as with counterfeit goods raids, foreigners have been beaten by police just for being present or for not complying with orders quickly enough.

Documentation raids have led to arrests of hundreds of both documented and undocumented foreigners throughout the country. Foreigners told Human Rights Watch that despite producing proper documentation, the police arrested and detained them from days to weeks in dirty holding centers while the Department of Home Affairs verified their legal status.

Foreigners, including those who are community activists, told Human Rights Watch that law enforcement officials often responded with indifference or provided inadequate remedies when they reported xenophobic attacks, such as beatings or lootings by South Africans. In the same vein, government and law enforcement officials have often denied that such attacks were xenophobic in nature, insisting instead that they were routine criminal acts.

Human Rights Watch was also told that while non-nationals may be subject to prolonged detention, for example while their legal status is verified, and their lawyers were denied access to them, by contrast suspected perpetrators of xenophobic violence, if arrested, may be released within a few days without effective investigations into the crimes of which they are suspected. Such impunity emboldens others and perpetuates xenophobia.

Most interviewees for this report want to stay in South Africa and contribute to the country and its economy. However, they face challenges in acquiring and renewing documentation to maintain legal status to remain in South Africa. This in turn causes difficulties in accessing education, healthcare, and other basic services. Such challenges are also a pivotal barrier to accessing justice. With little to no access to justice, the path toward accountability for xenophobia, and therefore bringing an end to it, remains uncertain.

Recommendations

To President Cyril Ramaphosa and the South African Government

- Prioritize and fully implement the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance (NAP). This includes focusing on actions that reflect and engender contemporary and emerging forms of discrimination and inequalities, not just racism inherited from South Africa's apartheid legacy. Such actions include taking steps to improve education on migration and xenophobia in schools; improving training on discrimination for government and law enforcement authorities; and alleviating poverty through enacting the national minimum wage, increasing skills development programs, and improving job creation mechanisms. Xenophobia should be acknowledged as manifesting not only as violence, but also as discrimination and barriers in accessing services including employment, education, healthcare, and housing.
- Create indicators for the NAP's activities and outputs so that its implementation and adherence to the five year plan can be monitored and evaluated. Also, an accountability mechanism should be established to ensure that those tasked to lead certain activities and outputs achieve the indicators and adhere to the timeline.
- In public statements, government officials should acknowledge the following:
 - The existence of xenophobia and its scope, taking into account both the intent and impact of words and actions. When incidents motivated by xenophobia or that disproportionately impact non-nationals occur, the South African government should openly speak out against xenophobia, seek accountability, and promote inclusivity and cohesion;
 - That xenophobia manifests not only as violence, but also as discrimination and barriers to accessing education, healthcare, employment, housing, etc.; and
 - That crimes against non-nationals may be, and are often, motivated by xenophobia and this should be an element in the investigation and prosecution of such crimes.
- Create fora and channels which both South Africans and non-nationals can use to submit complaints and advocate on pressing issues, such as their education,

healthcare, and housing needs, and concerns related to poverty, inequality, and crime, with government authorities.

- Establish joint governmental and community task forces that include non-nationals living in South Africa to guide implementation of the NAP, including identifying measures that can improve integration, inclusivity, and social cohesion. This should replace the practice of forming ad hoc groups in response to separate incidents of xenophobic violence.
- In the battle for the hearts and minds of South Africans, host anti-xenophobia events that promote integration, inclusivity, and social cohesion. They should include educational events on African history and migration to promote better understanding of why foreigners migrate and highlight their contributions to the community. This should be done in line with the NAP's activities and outputs to reverse the psychological effects and impact of apartheid and colonialism in order to reflect contemporary discrimination and inequalities.
- Work in collaboration with civil society organizations and local community groups to accurately assess the needs of poor or marginalized South Africans and non-nationals and develop a plan of action to provide services, resources, and opportunities to address those needs.
- Require ongoing education and training of South African government staff and all public officials on racism, xenophobia, and implicit biases. Such training should be facilitated in interactive and recurring sessions.

To Department of Basic Education

- Ensure that undocumented, asylum seeking, refugee, or foreign children are not denied access to education solely for lack of specific forms of documentation. To meet requirements that children have government-issued identification numbers or passport numbers for the purpose of enrollment, formats such as an affidavit or sworn statement by the child's parents or guardians, should suffice as acceptable identification.
- Enact reporting protocols for teachers and school staff to follow when xenophobic harassment and attacks by students on other students occur in schools. Disciplinary action should be encouraged to hold students accountable for their actions and deter further xenophobic incidents.
- Incorporate lessons on migration and xenophobia into the national syllabus as recommended in the Report on the SAHRC Investigation into Issues of Rule of Law,

Justice and Impunity Arising Out of the 2008 Public Violence Against Non-Nationals.¹ Lessons on migration should include explanations of contemporary history of the African continent to encourage understanding on why people move, seek asylum, become refugees, or become stateless. Such lessons should discuss how human rights guaranteed by international and domestic legal obligations apply to non-nationals as well.

To Department of Home Affairs

- Reopen the Cape Town Refugee Reception Office and provide mobile services for acquiring and renewing documentation. The budget and planning for refugee reception offices and mobile services should prioritize data-backed needs on the ground.
- Extend asylum seeker permit validity lengths to at least a year to alleviate the department's backlog and non-nationals' challenges in renewing documentation. Administrative inefficiencies that contribute to the backlog and challenges should be identified and measures should be created to both accelerate and reduce such issues.
- Expedite access to birth certificates and documentation needed for school enrollment and examinations to all children born in South Africa. Because fulfilling the requirements to acquire such documents have imposed an undue burden on parents, guardians, or others legally responsible for children, alternative processes should be instituted to avoid children being inadequately documented, undocumented, or stateless.
- Provide a transparent pathway from asylum-seeker permits to permanent residency and an improved pathway to citizenship for long-term foreign residents who have established ties in South Africa.
- Make accurate information on immigration rules, laws, and policies widely and publicly available through announcements, pamphlets, and text and voice messages that are accessible to non-nationals. These should be made available in simplified, straightforward language. As recommended in the Report on the SAHRC Investigation into Issues of Rule of Law, Justice and Impunity Arising Out of the

¹ "Report on the SAHRC Investigation into Issues of Rule of Law, Justice and Impunity arising out of the 2008 Public Violence against Non-Nationals," South African Human Rights Commission, March 18, 2010, <https://www.sahrc.org.za/home/21/files/Report%20on%20the%20SAHRC%20Investigation%20into%20Issues%20of%20Rule%20of%20Law,%20Justice%20and%20Impunity%20arising%20out%20of%20the%202008%20Public%20Violence%20against%20Non-Nationals.pdf> (accessed August 7, 2020).

2008 Public Violence Against Non-Nationals, the Department should take responsibility for administrative injustices stemming from inconsistent information systems and messaging.²

- After displacement of non-nationals from xenophobic violence, facilitate their reintegration with each level of government allocated clear enumerated responsibilities to ensure their safety. The reintegration plan should provide resources to the displaced and include community conflict resolution mechanisms to recognize that conflict may exist, but it does not need to manifest in discrimination or violence. Displaced people should be fully informed of the reintegration plan, resources available to them, and options for legal remedies. Locals should be informed, in national and local languages, of non-nationals' rights and the legal repercussions of threatening or harming non-nationals. If reintegration is not possible, displaced people should be given options, such as relocation to a new neighborhood, with voluntary repatriation as a last resort.
- Host interactive and recurring trainings on racism, xenophobia, implicit biases, and ethnic and language sensitivity for all Department of Home Affairs staff.

To Department of International Relations and Cooperation

- Establish and utilize effective early warning systems to mitigate and monitor threats and violence against non-nationals in coordination with their home countries, such as the one agreed to between South Africa and Nigeria in 2017 and 2019.³ Such systems should not place the responsibility on home countries to protect their nationals living in South Africa. Rather, these systems should facilitate ongoing dialogue between countries to ensure that the home countries' nationals in South Africa are adequately warned of possible threats and violence and informed of mechanisms in place to protect them.

To Department of Justice and Constitutional Development

² "Report on the SAHRC Investigation into Issues of Rule of Law, Justice and Impunity arising out of the 2008 Public Violence against Non-Nationals," South African Human Rights Commission, March 18, 2010, <https://www.sahrc.org.za/home/21/files/Report%20on%20the%20SAHRC%20Investigation%20into%20Issues%20of%20Rule%20of%20Law,%20Justice%20and%20Impunity%20arising%20out%20of%20the%202008%20Public%20Violence%20against%20Non-Nationals.pdf> (accessed August 7, 2020).

³ See "Early Warning Centre for SA, Nigeria," SA News, March 13, 2017, <https://www.sanews.gov.za/south-africa/early-warning-centre-sa-nigeria> (accessed September 8, 2020); "Nigeria, South Africa to set up early warning systems over attacks," Al Jazeera, October 3, 2019, <https://www.aljazeera.com/news/2019/10/nigerian-leader-south-africa-weeks-attacks-foreigners-191003095246106.html> (accessed September 8, 2020).

- Ensure that when suspects are identified in crimes, including property damage and public violence, against non-nationals, they are subject to effective investigations and appropriately charged and prosecuted.
- Ensure that crimes committed against non-nationals receive adequate judicial attention and response. South African locals who choose to threaten to or, actually do, retaliate against non-nationals, and participate in collective punishment of non-nationals should be charged and prosecuted.
- Raise awareness among poor South Africans of free or low-cost resources or venues available to them in achieving justice, such as Equality Courts. Judicial officers should be continuously trained and updated on such resources as well to encourage their utilization.
- Host interactive and recurring trainings on racism, xenophobia, and implicit biases for judicial officers.

To Parliament of South Africa

- Introduce and pass legislation to make racist and xenophobic motivations as possible aggravating factors in crimes and issue guidelines on appropriate sentencing for racist and xenophobic violence.

To Department of Police

- Carry out or commission an investigation into how SAPS responds to and may engage in or contribute to xenophobic incidents and xenophobia in the country. The investigation should at a minimum cover:
 - The conduct of counterfeit raids, including who is primarily targeted and on what basis, abuses that take place during them, and the outcomes in terms of counterfeit goods damaged, destroyed or seized and what happens to them;
 - The conduct of documentation raids and exercise of immigration checks and powers in general;
 - Complaints about use of excessive force;
 - Complaints about failure to respond to reports of criminal activity, open cases, and conduct effective investigations;
 - Complaints about corruption;

- Identifying the drivers of the problems documented, whether they be lack of capacity or funding, poor training or management, xenophobic attitudes, corruption, or other factors; and
- Recommendations to address the problems, including remedies for victims, internal checks and balances, and specific disciplinary action, including pursuing criminal sanctions, where appropriate.
- Require all police stations to have contingency plans for social conflict scenarios, as recommended in the Report on the SAHRC Investigation into Issues of Rule of Law, Justice and Impunity Arising Out of the 2008 Public Violence Against Non-Nationals.⁴ Hypothetical scenarios should range from a single attack on the street, to mobs retaliating against non-nationals as collective punishment, to riots beating non-nationals and looting and torching their properties. There should also be enumerated criteria to determine when areas can be deemed safe for non-nationals to return home or resume working following xenophobic incidents.
- Provide a dedicated portal or contact for non-nationals to report xenophobic incidents, including attacks and harassment by civilians as well as misconduct by government and law enforcement. Allegations against government and law enforcement authorities should be promptly and impartially investigated then prosecuted if substantiated. Data from this reporting mechanism should be collected to appropriately allocate resources to prevent and address xenophobia and accurately contribute to the NAP's Rapid Response Mechanism. As recommended in the Report on the SAHRC Investigation into Issues of Rule of Law, Justice and Impunity Arising Out of the 2008 Public Violence Against Non-Nationals, the criteria for reportable and actionable instances of xenophobia should be standardized across provinces, stations, and community policing structures.⁵
- Do not insinuate or in other ways promote claims that non-nationals are disproportionately or collectively responsible for crime.
- Host interactive and recurring trainings on racism, xenophobia, and implicit biases to enable officers to identify, diffuse, and resolve such issues. Police officials who have been subject to prior complaints or previous offenses related to racism or xenophobia, should be given extra supervision and training before being allowed in the field. Those with repeated misconduct should be terminated.

⁴ Ibid.

⁵ Ibid.

To South African Police Service (SAPS)

- Carry out or commission an investigation into how SAPS responds to and may engage in or contribute to xenophobia. The investigation should look at the conduct of counterfeit goods raids, including who are primarily targeted and on what basis, abuses that take place during them, and the outcomes in terms of counterfeit goods seized and what happened to them. It should also look at the conduct of documentation raids, and exercise of immigration checks and powers in general. It should also look at complaints of excessive force, failure to respond to reports of criminal activity, and failure to open cases and conduct effective investigation. To the extent possible, the investigation should identify which problems stem from poor training, xenophobic attitudes, management problems, resources, and capacity.
- Establish a separate early warning mechanism for the Crime Intelligence Division to mitigate and monitor threats and violence against non-nationals. The intelligence collected should feed into the NAP's Rapid Response Mechanism and be made available to relevant government departments as well as municipalities. This mechanism should have clear criteria for when action should be taken to protect non-nationals from possible violence and should inform related initiatives created by other government departments, such as the Department of International Relations and Cooperation's early warning systems that is to be created in coordination with other countries whose nationals are living in South Africa.
- When victims report threatening WhatsApp text or voice messages to the police or when they present video footage of xenophobic violence, ensure that prompt, thorough, and effective investigations are conducted that are capable of identifying perpetrators and holding them to account. SAPS officers assigned to investigations and cases should act promptly and in a nondiscriminatory way, recognizing that community trust in law enforcement officers is vital to social cohesion.
- Ensure that the criminal law is enforced from the perspective of both the victims and suspects of crime without discrimination based on race, nationality, national origin, or ethnicity so that South African and foreign victims and suspects have access to justice and are held to account respectively on an equal basis.
- In coordination with civil society organizations and local community groups, create a plan of action prioritizing the protection of life and property for when riots and looting overwhelm all available SAPS officers and resources.

- Guarantee that all arrested and detained people have access to and the opportunity to consult with legal representation.
- Open and maintain satellite police stations near informal settlements and in areas that have either been deemed at risk of xenophobic violence or have previously experienced such violence as recommended in the Report on the SAHRC Investigation into Issues of Rule of Law, Justice and Impunity Arising Out of the 2008 Public Violence Against Non-Nationals.⁶

To Municipal Authorities

- Create an accessible platform to receive local grievances and help resolve them through conflict resolution services. Councillors should lead in addressing grievances and resolving conflicts. The platform should also receive allegations of bad faith acts by government and law enforcement officials, which should then be forwarded to relevant departments for investigation.
- Develop a directory of government and civil society resources and services available to victims of xenophobic attacks, looting, and displacement including healthcare services, financial assistance, and legal aid. In line with the NAP's output to ensure non-nationals are receiving the services to which they are constitutionally entitled, data should be collected from government and civil society resources and services to assess their use by non-nationals.
- For all municipalities, allocate resources to facilitate purposeful integration and social cohesion of different ethnic and racial groups. For municipalities that have previously experienced riots and violence against non-nationals, allocate resources to facilitate purposeful reintegration of non-nationals back into the communities. Displaced people should be fully informed of the reintegration plan, resources available to them, and options for legal remedies. Locals should be informed in simplified, straightforward language of non-nationals' rights and the legal repercussions of threatening or harming non-nationals. If reintegration is not possible, displaced people should be given options, such as relocation to a new neighborhood, with voluntary repatriation as a last resort.
- Reorganize collective advocacy programs such as community forums to include and actively invite people of diverse backgrounds in terms of race, ethnicity, language, and socioeconomic status to be truly representative of their

⁶ Ibid.

neighborhoods. Community leaders within these forums should be identified and tasked with intervening to prevent or end violence against non-nationals as recommended by the Report on the SAHRC Investigation into Issues of Rule of Law, Justice and Impunity Arising Out of the 2008 Public Violence Against Non-Nationals.⁷

⁷ Ibid.

Methodology

This report is based on interviews in Western Cape, Gauteng, and KwaZulu-Natal provinces in November 2019 with 41 people, including at least two children aged ten and eleven, as well as remote telephone and WhatsApp interviews with ten additional people between November 2019 to August 2020. Due to travel restrictions as a result of Covid-19, follow-up interviews were conducted by telephone, WhatsApp, or email.

Human Rights Watch interviewed non-nationals living in South Africa, including shop owners, community leaders, teachers, students, and truck drivers; lawyers and representatives of civil society organizations who work on issues related to xenophobia and migrants rights in South Africa; officials at the United Nations High Commissioner for Refugees (UNHCR) in Cape Town and Pretoria; academic scholars who are experts on xenophobia and migrants rights in South Africa; and government officials and diplomats. All incidents in the report have occurred between March 2019 and March 2020 to document xenophobia, discrimination, and barriers experienced by non-nationals in the year following the launch of the NAP.

Interviews were conducted in English, Bengali, and IsiZulu with the aid of interpreters. Those interviews that used an interpreter are noted.

Human Rights Watch did not provide compensation to any of the interviewees. Each interviewee was informed of how the information provided would be used and provided verbal consent to be interviewed. All were told that they could decline to answer any questions or could end the interview at any time. For security reasons, Human Rights Watch has used pseudonyms for most victim interviewees in this report. In one case which has already been subject to broader public exposure, Human Rights Watch has made an exception and, with the victim's consent, used his names.

Human Rights Watch called Diepsloot police station in February 2020, but there has been no response to multiple phone calls. In June 2020, Human Rights Watch sent a letter to Minister of Education in the Western Cape Debbie Schäfer requesting an update on any investigations into the August 27, 2019 attack on a student at a public school in Cape Town and received a response in July 2020. Human Rights Watch also sent separate letters to South African President Matamela Cyril Ramaphosa, Minister of Home Affairs Pakishe Aaron Motsoaledi, Minister of Justice and Correctional Services Ronald Lamola, and

Minister of Police Bheki Cele in June 2020. These letters contained questions related to their departments' actions, policies, and statements on various incidents researched for this report, accountability challenges for non-nationals, and internal efforts to combat discrimination. Director Michael Louw of Support Services for the Private Office of the President acknowledged receipt of the letter in June 2020, Minister of Home Affairs Motsoaledi acknowledged receipt of the letter in July 2020, Personal Assistant Darane L'oreal Philander of the Ministry of Police acknowledged receipt of the letter in June 2020, and Lieutenant Colonel Mpho Jafta of the South African Police Service acknowledged receipt of the letter in July 2020. However, there have been no other responses received at the time of this report's publication.

In this report, Human Rights Watch uses the term "foreigners" and "non-nationals" interchangeably to include both foreign nationals and stateless persons living in South Africa.

As a result of travel limitations occasioned by Covid-19, Human Rights Watch was unable to research and examine some human rights violations related to xenophobic incidents in South Africa, and as such, this report is not as comprehensive in scope as originally envisaged. Human Rights Watch acknowledges the economic challenges exacerbated by Covid-19 in South Africa and other countries in the African continent, which has manifested in xenophobic violence and other incidents since March 2020 not covered in this report.

Background

Since South Africa's first democratic election in 1994, Human Rights Watch has documented xenophobic harassment and violence, such as verbal abuse and physical attacks, that continue to be a lived reality for many African and Asian foreigners in the country.⁸ While xenophobic violence has occurred in all nine provinces, the African Centre for Migration and Society's Xenowatch has found that Gauteng, Western Cape, and KwaZulu-Natal provinces have experienced the most incidents with 40.1 percent, 21 percent, and 12.7 percent, respectively, of documented incidents from 1994-2018.⁹

Often scapegoated for economic insecurity and government failures in delivering basic services to its citizens, many African and Asian foreigners who have been targets of xenophobia, live in neighborhoods with predominantly poor, Black South African neighbors who have limited access to resources and employment opportunities. Official government data for the last quarter of 2019 recorded the unemployment rate at 29.1 percent.¹⁰ Unemployment among the Black/African population was at 43 percent, and at 30.1 percent, 20.6 percent, and 9.8 percent of the "Coloured" (which refers to persons deemed to be of mixed race in South Africa), Indian/Asian, and White populations respectively.¹¹

The South African Human Rights Commission (SAHRC) defines xenophobia as "an irrational deep dislike of non-nationals."¹² South Africans' interpersonal trust towards non-

⁸ "Prohibited Persons: Abuse of Undocumented Migrants, Asylum-Seekers, and Refugees in South Africa," Human Rights Watch, March 1998, <http://www.hrw.org/legacy/reports98/sareport/>.

⁹ "Xenophobic Violence in South Africa: 1994-2018 – An Overview Report," *Xenowatch*, March 2019, <https://www.xenowatch.ac.za/xenophobic-violence-in-south-africa-1994-2018-an-overview-report/> (accessed September 8, 2020).

¹⁰ From October to December 2019, among those who were not in employment, education, or training, the Black/African population made up 84.45 percent, the Coloured population – which in South African policy refers to persons deemed to be of mixed race – made up 8.7 percent, the Indian/Asian population made up 2.35 percent, and the White population made up 4.49 percent. During this time frame, of the working age population (15-64 years old), the Black/African population was 80.78 percent, the Coloured population was 9.02 percent, the Indian/Asian population was 2.62 percent, and the White population was 7.58 percent. Statistics South Africa, "Quarterly Labour Force Survey (QLFS)," 4th Quarter 2019," February 11, 2020, <http://www.statssa.gov.za/publications/Po211/Po2114thQuarter2019.pdf> (accessed July 4, 2020).

¹¹ *Ibid.*

¹² South African Human Rights Commission, Submission to the Home Affairs Portfolio Committee on the White Paper on International Migration, January 2000, <https://www.sahrc.org.za/home/21/files/2%20SAHRC%20Submission%20on%20White%20Paper%20International%20Migration%20%28Parl.%29Jan%202000.pdf> (accessed September 8, 2020).

nationals has been found to be low.¹³ According to the South African Reconciliation Barometer (SARB) Survey 2019 Report, 54.1 percent of South African respondents did not trust foreigners from other African countries and 51.9 percent did not trust foreigners not from other African countries, compared to 31.8 percent who did not trust other race groups.¹⁴

This xenophobia has manifested as verbal abuse and physical attacks, with notable waves occurring in 2008 and 2015 when hundreds of foreigners were injured and displaced nationwide. Instead of taking steps to prevent these verbal abuse and physical attacks, law enforcement and other government officials have targeted foreigners in their public statements, such as by referring to them as “ungovernable.”¹⁵ Law enforcement raids to identify counterfeit goods or verify documentation, that most often target non-nationals, are used also to deflect from government failures in addressing issues such as crime, poverty, and unemployment.¹⁶ Following each wave of violence, there have been hundreds of arrests of suspected perpetrators, which South African officials have been quick to point to. However, those apprehended have typically been released within a few days without charge and rarely prosecuted.¹⁷ This lack of accountability seems – predictably – to have emboldened perpetrators, leading to recurring, reprehensibly violent xenophobic attacks since 1994.

While there is no justification for the often violent and always harmful xenophobia which persists in South Africa, it is important to acknowledge and understand the issues of poverty and inequality which are intertwined with the manifestations of that xenophobia and are weaponized to fuel it. SARB data collected in 2019, as in most SARB surveys since 2003, revealed that South African respondents ranked inequality as the primary source of division in society.¹⁸ The SARB survey found that 75.8 percent of South Africans agree that

¹³ Elnari Potgieter, “SA Reconciliation Barometer Survey 2019 Report,” The Institute for Justice and Reconciliation, December 2019, <https://www.ijr.org.za/portfolio-items/sa-reconciliation-barometer-2019/> (accessed August 7, 2020).

¹⁴ Ibid.

¹⁵ South African Police Service, Office of the Provincial Commissioner Gauteng, Media Statement, August 1, 2019, <https://www.saps.gov.za/newsroom/msspeechdetail.php?nid=21545> (accessed September 8, 2020).

¹⁶ Ibid.

¹⁷ The South African Human Rights Commission reported that 597 court cases were opened following the 2008 wave of xenophobic violence. By October 2009, 218 cases had been withdrawn and only 159 cases had been finalized with a verdict, of which 98 were found guilty and 61 were not guilty. See “Report on the SAHRC Investigation into Issues of Rule of Law, Justice and Impunity arising out of the 2008 Public Violence against Non-Nationals,” South African Human Rights Commission, March 18, 2010, <https://www.sahrc.org.za/home/21/files/Report%20on%20the%20SAHRC%20Investigation%20into%20Issues%20of%20Rule%20of%20Law,%20Justice%20and%20Impunity%20arising%20out%20of%20the%202008%20Public%20Violence%20against%20Non-Nationals.pdf> (accessed August 7, 2020).

¹⁸ Institution for Justice and Reconciliation, SA Reconciliation Barometer Survey 2019 Report, December 2019, <https://www.ijr.org.za/portfolio-items/sa-reconciliation-barometer-2019/> (accessed September 8, 2020).

many Black South Africans do not own land or property because of the lasting effects of apartheid and that many Black South Africans still live in poverty today because of the lasting effects of apartheid. Post-apartheid, locals expect that it is the responsibility of the government to resolve the poverty and inequality that disproportionately affect Black South Africans. However, their expectations are not being met and the government's failure to do this has not only resulted in lack of protections for vulnerable populations, but also facilitated an environment where xenophobia is too easily weaponized.

As a result, in conjunction with scapegoating non-nationals for economic insecurity and government failures, South African locals have expressed their dislike for non-nationals by insisting that the limited employment, healthcare, education, and housing opportunities available should be reserved for South Africans. Thirty-six percent of South African respondents reported that they would likely prevent people from other African countries from accessing jobs, 34 percent reported that they would likely prevent African foreigners from accessing government services, 38 percent reported that they would likely prevent African foreigners from operating a business in their area, and 39 percent reported that they would likely prevent African foreigners from moving into their neighborhood.¹⁹ As the SARB survey shows, many South African locals not only distrust foreigners, but also believe that the presence of foreigners has negatively impacted their circumstances by taking away opportunities. However, a 2018 World Bank Group report found that a 1 percent increase in immigrants increases local employment by 0.2 percent.²⁰ This roughly translates to a generation of two local jobs for every one immigrant worker.

On March 25, 2019 the government promisingly launched the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance (NAP) after consultations with government departments, Chapter Nine institutions, civil society organizations, businesses, and organized labor since 2016.²¹ A total of 159 submissions were received and considered in the final draft. Recommendations on xenophobia from the Parliamentary Ad Hoc Joint Committee on Probing Violence against Foreign Nationals Report and the Special Reference Group on Migration and Community Integration in KwaZulu-Natal chaired by Judge Navi Pillay, which provided detailed recommendations to various government departments on how best to address their challenges in responding to the 2008 wave of xenophobic violence, were incorporated. As a result, seven general

¹⁹ Ibid.

²⁰ World Bank Group, *Mixed Migration, Forced Displacement and Job Outcomes in South Africa*, June 2018, <https://openknowledge.worldbank.org/handle/10986/30158> (accessed September 8, 2020).

²¹ Department of Justice of South Africa, *National Action Plan to combat Racism, Racial Discrimination, Xenophobia and Related Intolerance*, <https://www.justice.gov.za/docs/other-docs/NAP/NAP-20190313.pdf> (accessed September 8, 2020).

principles inform the NAP: universality, interdependence and indivisibility of human rights, participation and inclusion, progressive realization, accountability, equality and non-discrimination, and intersectionality.

The NAP defines xenophobia as “an attitudinal orientation of hostility against non-nationals in a given population.” In its preamble, the NAP recognizes that “poverty and underdevelopment are racially based, affecting mostly black persons” and that “years of a racist and isolationist policy of apartheid have planted seeds of xenophobia, particularly towards Africans.” It elaborates that poverty is not only a human rights concern, but also a cause and consequence of human rights violations. The NAP states that Black South Africans consistently held the highest poverty rates, with 47 percent of households headed by Black South Africans being considered poor compared to 23 percent for Coloured households, a little more than 1 percent for Indian/Asian South African households, and less than 1 percent for white households.

The NAP aims to better public awareness and understanding around xenophobia and its causes, improve protection and access to justice for victims, and enhance the quality of anti-discrimination data collected, to promptly respond to xenophobic incidents by creating a Rapid Response Mechanism (RRM). The RRM will document racist and xenophobic incidents reported to the South African Police Service (SAPS) and SAHRC on the number of cases prosecuted. However, implementation of the NAP remains a key challenge. For this report, Human Rights Watch has documented various xenophobic incidents and inadequate responses by the government to such incidents in the first year since the NAP’s adoption.²²

²² See “South Africa: Attacks on Foreign Nationals,” Human Rights Watch, April 15, 2019, <https://www.hrw.org/news/2019/04/15/south-africa-attacks-foreign-nationals>; “South Africa: Deadly Attacks on Foreign Truck Drivers,” Human Rights Watch, August 26, 2019, <https://www.hrw.org/news/2019/08/26/south-africa-deadly-attacks-foreign-truck-drivers>; “South Africa: Punish Xenophobic Violence,” Human Rights Watch, September 13, 2019, <https://www.hrw.org/news/2019/09/13/south-africa-punish-xenophobic-violence>; and “Human Rights Watch Letter to President Matamela Cyril Ramaphosa,” Human Rights Watch, September 23, 2019, <https://www.hrw.org/news/2019/09/23/human-rights-watch-letter-president-matamela-cyril-ramaphosa>.

Xenophobic Incidents March 2019 — March 2020

By South African Locals

Human Rights Watch has examined both mob and targeted attacks that have taken place between March 2019 and March 2020 against African and Asian foreigners throughout South Africa, but mostly in the predominantly poor, Black South African areas in the provinces of Western Cape, Gauteng, and KwaZulu-Natal.

Attacks as Retaliation and Collective Punishment

One form of attacks on non-nationals is what could be termed “collective punishment” of African and Asian foreigners for a crime allegedly committed by one or a few foreigners. For example, on July 25, 2019 in Richards Bay Central Business District, KwaZulu-Natal, a group of South African locals accused foreigners of dealing drugs and beat up random foreigners as they looted and torched foreigner-owned and rented cars and shops, including restaurants, spazas, and hair salons. Media reports indicated that local taxi drivers demanded 10,000 Rand (US\$600) from victimized non-nationals for the attacks to be stopped.²³ At least two non-nationals were found dead by the end of the day.²⁴ The apparent trigger for the attacks on that day was the robbery and fatal stabbing of a South African bus driver,



A family of non-nationals moved to Umlazi Township in KwaZulu-Natal to escape xenophobic violence only to have a mob break their home window, beat them, and steal their money in November 2019. ©2019 Private

²³ “Richards Bay murders ‘were not xenophobic,’” *IOL*, August 1, 2019, <https://www.iol.co.za/dailynews/news/kwazulu-natal/richards-bay-murders-were-not-xenophobic-30159052> (accessed December 16, 2019).

²⁴ “Migrants and refugees live in fear after taxi rank violence,” *New Frame*, August 1, 2019, <https://www.newframe.com/migrants-and-refugees-live-in-fear-after-taxi-rank-violence/> (accessed December 16, 2019).

55, allegedly by foreigners who were dealing drugs in the district.²⁵

A similar attack happened in apparent retaliation for an incident involving a non-national who allegedly killed a police officer. Oupa Matjie, a police captain in Diepsloot, a township in Johannesburg, was fatally shot on January 17, 2020 while pursuing a Zimbabwean national alleged to be involved in an attempted murder and home robbery.²⁶ Six days later, on January 23, violence against foreigners erupted when the police refused to hand over the Zimbabwean suspect to an angry mob.²⁷ A journalist who witnessed the violence told Human Rights Watch that the rioters barricaded roads with burning tires, cow skulls, and furniture. They set bushes on fire and shut down shopping malls and schools while the homes and shops of non-nationals were looted and attacked for several days.²⁸

Attacks to Garner Government Attention

Human Rights Watch was told on a number of occasions that another common reason given for the violent attacks is to gain the attention of the authorities, who perpetrators claim have failed to deliver on their promises of delivery of social infrastructure, fighting crime, and curbing irregular immigration. Perpetrators also claim that authorities have ignored the poverty and inequality that they find themselves in, and the government has taken little to no steps to create opportunities or provide resources to enable them to improve their wellbeing. This has led to an environment in which xenophobia is weaponized.

In relation to the riots in Diepsloot discussed above, one local resident forwarded to Human Rights Watch viral WhatsApp messages that discussed the plans for retaliation against foreigners that circulated in Diepsloot at the time. One message included phrases such as “there’s no xenophobia when we deal with people without papers” and “let’s cause anarchy so that there will be reaction from national government.” Human Rights Watch wrote to the Minister of Police and Minister of Justice and Correctional Services in June 2020 asking if there have been investigations into these viral messages, but there has been no response at the time of writing this report.

²⁵ “WATCH | Richards Bay residents chase drug dealers from CBD after murder,” *Times LIVE*, July 25, 2019, <https://www.timeslive.co.za/news/south-africa/2019-07-25-watch-richards-bay-residents-chase-drug-dealers-from-cbd-after-murder/> (accessed December 16, 2019).

²⁶ Human Rights Watch interview with Zimbabwe Ambassador to South Africa David Hamadziripi on February 6, 2020.

²⁷ “Cop killing sees Diepsloot residents take their anger out on foreign nationals,” *IOL*, January 23, 2020, <https://www.iol.co.za/the-star/news/cop-killing-sees-diepsloot-residents-take-their-anger-out-on-foreign-nationals-41162443> (accessed January 25, 2020).

²⁸ Human Rights Watch interview with a journalist from Diepsloot on February 7, 2020.

Human Rights Watch observed that there is a tendency among perpetrators of attacks against non-nationals to deny that they are acting out of xenophobia, insisting that they are only taking action against those who are undocumented or do not hold legal status to remain in the country. They argue that undocumented foreigners are illegally depleting resources and opportunities, such as employment, housing, and healthcare, to which South African citizens are lawfully entitled. However, in addition to such reasoning offering no justification for the illegal and extreme acts of violence against non-nationals, in practice, Human Rights Watch has not documented an instance when perpetrators differentiated between undocumented and documented foreigners.

Riots in Western Cape, Gauteng, and KwaZulu-Natal provinces, September 2019

Human Rights Watch found that local South Africans who took part in the September 2019 riots in Western Cape, Gauteng, and KwaZulu-Natal provinces, that turned violent, were often driven by multiple frustrations, including what they perceived to be government indifference to their concerns and needs, and government failure to meet their expectations in providing opportunities in employment and housing. Also, these locals held false beliefs that non-nationals were primarily responsible for crimes like drug deals and robberies and for lack of employment opportunities. Zweli Ndaba, chair of the self-described “nationalist organization,” Sisonke People’s Forum, has said that his organization alongside All Truck Drivers Forum, a movement of South African truck drivers against the employment of foreigners, called for a national shutdown on September 2, 2019.²⁹ According to *New Frame*, a nonprofit social justice media publication in Johannesburg, the shutdown intended to block access to communities and industrial areas “until [their] voices [are] heard.” *New Frame* reported that Sisonke People’s Forum flyer stated: “ENOUGH IS ENOUGH, ON SELLING OF DRUGS, ON PROPERTY THEFT, AND ON OUR WORK TAKEN BY FOREIGN NATIONALS...South Africa for South Africans. This is not xenophobia but the truth.”³⁰

Various interviewees have sent Human Rights Watch viral WhatsApp text and voice messages they received threatening it would become “deadly” on September 2 if

²⁹ Sisonke People’s Forum (st)’s Twitter account, <https://twitter.com/PoliticsSPF/status/1279046709499310080?s=20> (accessed September 8, 2020); All Truck drivers foundation Facebook account, <https://www.facebook.com/groups/145985564132095/> (accessed September 8, 2020); “The people who sparked the xenophobic violence,” *New Frame*, September 11, 2019, <https://www.newframe.com/the-people-who-sparked-the-xenophobic-violence/> (accessed October 9, 2019).

³⁰ “The people who sparked the xenophobic violence,” *New Frame*, September 11, 2019, <https://www.newframe.com/the-people-who-sparked-the-xenophobic-violence/> (accessed October 9, 2019).

foreigners did not leave and that “there will be fire and blood.”³¹ All of the non-nationals who spoke to Human Rights Watch said they either received or knew of these messages.

The violence erupted at night on September 1 when looters and arsonists targeted and destroyed car repair shops, tailors, and other businesses in Jeppestown, Johannesburg which has a large business community of non-nationals.³² By September 2, hundreds of men carrying sticks and other makeshift weapons marched from Jeppestown to Bree Street looting shops, torching cars, and chanting “*Mabahambe, sesikhathele!*”, which means “they must leave, we have had enough” in IsiZulu.³³ A witness who worked on Jules Street in Jeppestown and witnessed the events told Human Rights Watch that while most of the looted and burnt shops were foreigner-owned, a car sales shop owned by South Africans was also looted and burned.³⁴ When Human Rights Watch visited Jules street in November 2019, the damage was visible and businesses, including car sales and repair shops, remained closed.

Human Rights Watch spoke to several non-nationals whose shops were looted by rioters who took not only goods, but also shelves and furniture. Jean, a Congolese shop owner, told Human Rights Watch that his shop’s landlord, a South African, phoned him at home on the night of September 2 to inform him that looters, including some people he knew,

³¹ Human Rights Watch has found that the rhetoric that non-nationals are overwhelming or overtaking the local South African population are unfounded. According to the United Nations Department of Economic and Social Affairs Population Division, “international migrants” (people living in a country other than that in which they were born or people living in a country other than that of their citizenship) comprised 6.9 percent of South Africa’s total population in 2015 and 7.2 percent of South Africa’s total population in 2019. In 2015, there were 1,217,709 asylum seekers and refugees in South Africa, which made up 31.9 percent of international migrants and in 2019, there were 280,000 asylum seekers and refugees in South Africa, which made up 6.6 percent of international migrants in South Africa. In 2019, the top five countries of origin for international migrants in South Africa in descending order were Mozambique, Zimbabwe, Lesotho, Namibia, and United Kingdom. The percentage of international migrants originating from other Sub-Saharan African countries remained unchanged at 76.1 percent in 2015 and 2019. United Nations Department of Economic and Social Affairs Population Division, “International migrant stock: The 2017 revision,”

<https://www.un.org/en/development/desa/population/migration/data/estimates2/estimates17.asp> (accessed July 15, 2020); United Nations Department of Economic and Social Affairs Population Division, “International migrant stock 2019: Country Profiles,” <https://www.un.org/en/development/desa/population/migration/data/estimates2/countryprofiles.asp> (accessed July 1, 2020).

³² “City in lockdown as looters target migrant-rich areas across Johannesburg and East Rand,” *Daily Maverick*, September 2, 2019, <https://www.dailymaverick.co.za/article/2019-09-02-city-in-lockdown-as-looters-target-migrant-rich-areas-across-johannesburg-and-east-rand/> (accessed October 9, 2019).

³³ “‘Mabahambe, sesikhathele!’ – They must leave, we have had enough,” *Daily Maverick*, September 2, 2019, <https://www.dailymaverick.co.za/article/2019-09-02-joburg-traders-and-random-people-terrorised-and-beaten-by-weapon-wielding-looters-amid-a-lame-police-response/> (accessed October 9, 2019).

³⁴ Human Rights Watch interview with a witness on November 14, 2019 in Jeppestown.

were breaking into his shop.³⁵ He quickly jumped in his car to drive the few miles to his shop, but once he arrived, the looters chased him away with stones. He was glad to escape unscathed, unlike a similar situation in 2008 when rioters beat him. As riots spread from business to residential areas, his home window was shattered while he hid, alongside his wife and children, shaking in fear. Reflecting on his experience, he told Human Rights Watch: “I am not feeling happy even though I am alive. I am trying not to be so angry, but I am so angry.”³⁶

Compensation of the damages of my property

The following are items looted and damaged and the estimation per Rand value of my mini-shop from the [REDACTED]

No	DESCRIPTION	Amount / ZAR
01	Cigarettes	130,000
02	Hardware	120,000
03	Airtime and machines	30,000
04	Food stuff	100,000
05	Commercial fridges	40,000
06	Shelves, security gates, roller door	30,000
	Total	450,000

[REDACTED]

Cell. No: +27 [REDACTED] or +27 [REDACTED]

A permanent resident originally from the Democratic Republic of Congo, “Jean,” showed Human Rights Watch this list of damages from when his shop in Johannesburg was looted in September 2019. He has approached the police and civil society organizations with this list, requesting compensation so that he can begin to rebuild his life, to no avail. ©2019 Kristi Ueda

Syed, a Bangladeshi shop owner, showed Human Rights Watch a row of shops in Johannesburg Central Business District that were looted during the September 2019 riots, pointing to mangled metal that was cut and bent to force entry.³⁷ He said that within the Bangladeshi business community, 1,000 shops were looted and a mob of 300-500 people tried to break into his family’s shops. The row of shop owners, including Syed, called the police. However, the police did not come for three days, so he and other shop owners did not sleep for three nights, as they guarded their shops as rioters threw stones at them for three days.³⁸

One of the immediate impacts of the riots, was to displace foreign families from their homes, leading them to lose their sources of income and preventing children from attending school.³⁹ For example, as a result of the September 2019 riots, 588 adults and

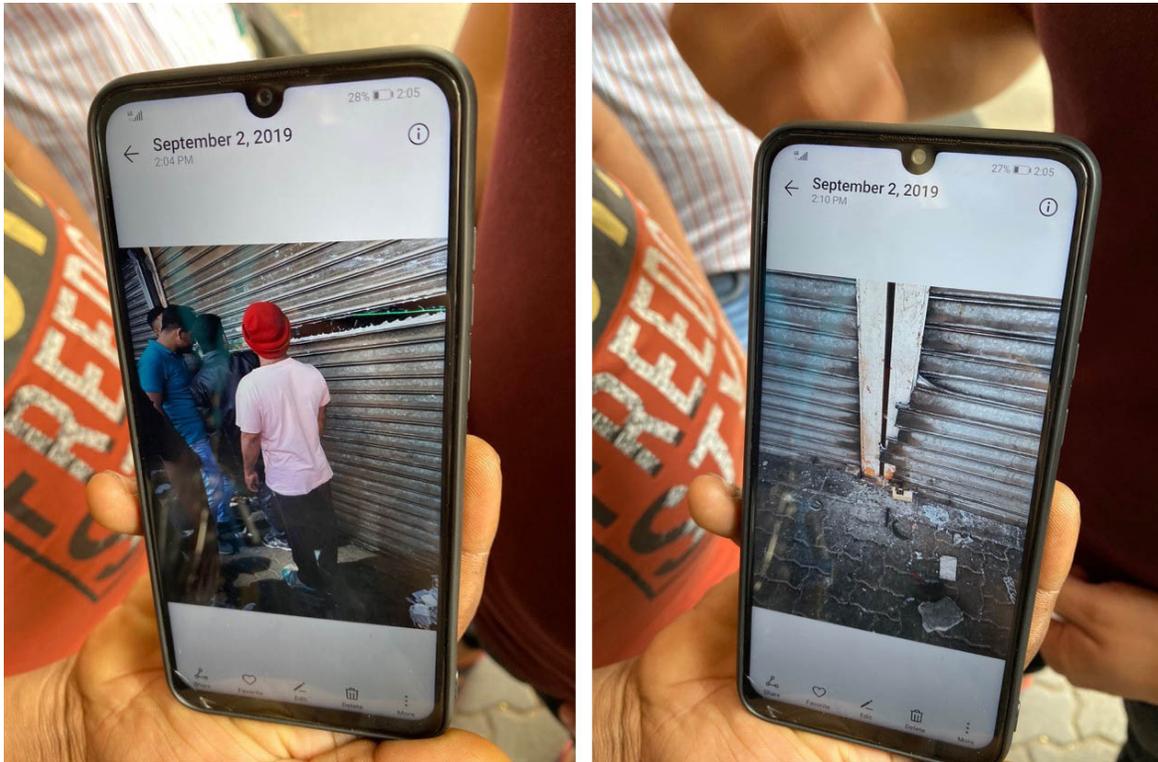
³⁵ Ibid.

³⁶ Ibid.

³⁷ Human Rights Watch interview with Syed on November 20, 2019 in Johannesburg.

³⁸ Ibid.

³⁹ This was the same in earlier xenophobic riots when foreigners whose homes and businesses were looted and torched had to flee to police stations and community centers for protection. For example, over 250 Malawians and Zimbabweans sought refuge at Sydenham Police Station in eThekweni during the March 2019 riots. See “South Africa: Attacks on Foreign Nationals,” Human Rights Watch, April 15, 2019, <https://www.hrw.org/news/2019/04/15/south-africa-attacks-foreign-nationals#>.



Photographs of damaged shops in Johannesburg Central Business District, captured on a cell phone. The photo on the left shows the Bangladeshi shop owners who stood guard for three days as rioters threw objects at them in September 2019. ©2019 Kristi Ueda

227 children had to be temporarily housed at Tsolo Community Hall and DH Williams Hall in Katlehong township east of Johannesburg.⁴⁰ Ntombi, a representative of Tsolo Community Hall told Human Rights Watch that they housed 200 non-nationals in the hall, including four pregnant women, from Zimbabwe, Malawi, and Mozambique for two weeks.⁴¹ Civil society organizations provided supplies and medical help to those who lost their belongings and medications during the riots, some of which were stolen or torched, and Department of Home Affairs officials helped with documents to facilitate repatriations.⁴² In Johannesburg, a Bangladeshi activist told Human Rights Watch that he ran a safe home for over 150 displaced men while women and children were sheltered in community members' homes.⁴³

⁴⁰ "City shelters assist displaced foreign nationals," South African Government News Agency, September 10, 2019, <https://www.sanews.gov.za/south-africa/city-shelters-assist-displaced-foreign-nationals> (accessed October 9, 2019).

⁴¹ Human Rights Watch interview with Ntombi on November 20, 2019 in Katlehong.

⁴² Ibid.

⁴³ Human Rights Watch interview with a Bangladeshi activist from Johannesburg on November 22, 2019 in Johannesburg.

Official figures say 10 South Africans and 2 foreigners died as a result of the September violence in Gauteng, KwaZulu-Natal, and Western Cape provinces.⁴⁴ However, based on Human Rights Watch's interviews and credible media reports, there were more total deaths and more than two foreigners killed.⁴⁵

Human Rights Watch was able to document seven of the cases of South Africans killed in the September violence in Gauteng, KwaZulu-Natal, and Western Cape:

- 1) Isaac Sebuku, 25, male, shot by a shop owner while rioters were looting foreigner-owned shops in Slovo Park on September 3.⁴⁶ The shop owner was arrested.⁴⁷
- 2) Karabo Ditire, male, shot allegedly by a Somali shop owner in Slovo Park on September 3.⁴⁸
- 3) One male, shot in Brixton on September 3.⁴⁹
- 4) One male, shot in Sophiatown on September 3.⁵⁰
- 5) One male, 24, shot by a landlord protecting his foreign tenant in White City Section of KwaThema on September 4.⁵¹ The landlord was arrested.⁵²
- 6) Mduduzi Mchunu, male, killed in Jeppestown.⁵³
- 7) George "Sungusungu" Kwachana, 45, male, shot while protecting a Shangaan-speaking woman who was called a foreigner and attacked by looting rioters in Katlehong.⁵⁴

⁴⁴ "Gauteng xenophobic violence: 10 of 12 victims were South Africans – defence minister," News24, September 10, 2019, <https://www.news24.com/SouthAfrica/News/gauteng-xenophobic-violence-10-of-12-victims-were-south-africans-defence-minister-20190910> (accessed October 9, 2019).

⁴⁵ Human Rights Watch interview with Vusumuzi Sibanda on November 13, 2019 in Johannesburg.

⁴⁶ "Cele Defends Security Cluster Intelligence Amid Gauteng Violence," Eyewitness News, September 4, 2019, <https://ewn.co.za/2019/09/04/cele-defends-security-cluster-intelligence-amid-gauteng-violence> (accessed October 9, 2019).

⁴⁷ "Bystander allegedly shot dead by Somali shop owner during looting melee," IOL, September 5, 2019, <https://www.iol.co.za/the-star/news/bystander-allegedly-shot-dead-by-somali-shop-owner-during-looting-melee-31886198> (accessed February 5, 2020).

⁴⁸ Ibid.

⁴⁹ "Gauteng violence: Death toll rises after two burned bodies found in Alexandra," News24, September 4, 2019, <https://www.news24.com/SouthAfrica/News/two-south-africans-one-zimbabwean-woman-among-5-killed-during-violent-gauteng-unrest-20190904> (accessed October 9, 2019).

⁵⁰ Ibid.

⁵¹ "Two more burnt bodies discovered in Gauteng," News24, September 5, 2019, <https://www.news24.com/SouthAfrica/News/two-more-burnt-bodies-discovered-in-gauteng-20190905> (accessed October 5, 2019).

⁵² "South African killed during xenophobic violence in Springs," GroundUp, September 5, 2019, <https://www.groundup.org.za/article/south-african-killed-during-xenophobic-violence-springs/> (accessed October 5, 2019).

⁵³ "Bystander allegedly shot dead by Somali shop owner during looting melee," IOL, September 5, 2019, <https://www.iol.co.za/the-star/news/bystander-allegedly-shot-dead-by-somali-shop-owner-during-looting-melee-31886198> (accessed February 5, 2020).

⁵⁴ "Xenophobia denialists should be held culpable," New Frame, September 19, 2019, <https://www.newframe.com/xenophobia-denialists-should-be-held-culpable/> (accessed October 20, 2019).

Reviewing media accounts and information published by foreign embassies and migrant support groups, Human Rights Watch identified at least 18 foreigners who were killed between September 2- 9 in connection with the violence in Western Cape, Gauteng, and KwaZulu-Natal provinces.⁵⁵ The victims include a Zimbabwean female security guard in Hillbrow on September 2;⁵⁶ Fortuné Dondai, a Zimbabwean male, in Hillbrow;⁵⁷ and two Congolese men.⁵⁸ The Embassy of the Democratic Republic of Congo in Pretoria later confirmed the deaths of two Congolese men in a September 11 press release, naming the victims as Bienvenue Mulenda and Edo Sisa.⁵⁹ According to the Embassy, Mulenda was fatally stabbed on September 2 at a bus stop in Bloemfontein and Sisa died on September 9 from trauma inflicted during the looting of his hair salon in Yeoville, Johannesburg.⁶⁰

Vusumuzi Sibanda is chairperson of the African Diaspora Forum, a nonprofit organization championing African and Asian migrants' rights in South Africa. He told Human Rights Watch that a Zimbabwean named Isaac Sithole, 35, male, was beaten, torched, and killed while fleeing his burning home in Katlehong Zone 1, Mandela Section in Gauteng on September 5 or 6.⁶¹ Sibanda also said that based on his organization's investigations, the following deaths occurred in Johannesburg within the first week of September: a Congolese shop owner who collapsed and died upon learning his shop was being looted; a Zimbabwean husband and wife who were burned in a building; two Ethiopians who died in a car accident while being chased by a mob; and one Malawian whose exact circumstances of death during a riot were unknown.⁶² In addition, Sibanda said he has

⁵⁵ Human Rights Watch has not been able to further explore and confirm details of these deaths because such investigations have been thwarted by Covid-19 travel restrictions.

⁵⁶ "Gauteng violence: Death toll rises after two burned bodies found in Alexandra," News24, September 4, 2019, <https://www.news24.com/SouthAfrica/News/two-south-africans-one-zimbabwean-woman-among-5-killed-during-violent-gauteng-unrest-20190904> (accessed October 9, 2019).

⁵⁷ "Bystander allegedly shot dead by Somali shop owner during looting melee," IOL, September 5, 2019, <https://www.iol.co.za/the-star/news/bystander-allegedly-shot-dead-by-somali-shop-owner-during-looting-melee-31886198> (accessed February 5, 2020).

⁵⁸ "Attaques xénophobes en Afrique du Sud : deux congolais parmi les victimes," Media Congo, September 4, 2019, https://www.mediacongo.net/article-actualite-56141-attaques_xenophobes_en_afrique_du_sud_deux_congolais_parmi_les_victimes.html (accessed October 30, 2019). In the media one of the victims was named as Tshibangu Nyandwe although the Embassy later identified the second victim by another name.

⁵⁹ "Xénophobie en Afrique du Sud : l'ambassade de la RDC à Pretoria annonce la mort de 2 congolais et présente ses condoléances," 7SUR7.CD, September 14, 2019, <https://www.7sur7.cd/2019/09/14/xenophobie-en-afrique-du-sud-lambassade-de-la-rdc-pretoria-annonce-la-mort-de-2> (accessed October 30, 2019).

⁶⁰ Xénophobie : l'ambassadeur de la RDC à Pretoria revoit son bilan et confirme l'assassinat de deux congolais," Politico, September 14, 2019, <https://www.politico.cd/actualite/diaspora/2019/09/14/xenophobie-lambassadeur-de-la-rdc-a-pretoria-revoit-son-bilan-et-confirme-l-assassinat-de-deux-congolais.html/47618/> (accessed October 30, 2019).

⁶¹ Human Rights Watch interview with Vusumuzi Sibanda on November 13, 2019 in Johannesburg.

⁶² Ibid.

been informed of at least seven yet to be identified foreign victims in Johannesburg from the same time period.⁶³

There are also reports of deaths where neither identities nor nationalities have been confirmed.⁶⁴ Sibanda stated that at the time Human Rights Watch spoke to him in November 2019, there remained many unidentified bodies in mortuaries from the September violence.⁶⁵ Additionally, by September 3, Police Minister Bheki Cele confirmed five murders in Johannesburg, including two in Coronationville, two in Hillbrow, and one in Jeppestown in connection to the riots.⁶⁶ Two more bodies were found burned in different torched shops in Alexandra, a township in Johannesburg, on September 4.⁶⁷ A second body was also found in Katlehong, Ekurhuleni with Sithole's body on September 5 or 6.⁶⁸ South African news agency *GroundUp* reported that on September 7, two people were fatally trampled during the looting of a Super Spar supermarket and foreigner-owned shops in Philippi, Cape Town.⁶⁹ On September 8, one person was fatally stabbed during a riot in Johannesburg Central Business District.⁷⁰ This riot moved to Malvern, a suburb of Johannesburg, later that day and one more person died in Malvern that night.⁷¹

Attacks on the Streets

In addition to xenophobic attacks that happened during riots, many non-nationals have been victims of xenophobia by South African locals in everyday settings. All foreigners, including the children, whom Human Rights Watch interviewed for this report said that they have been verbally and sometimes physically harassed for being foreign or not

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ "Bheki Cele blames Joburg violence on Cleveland and Denver hostel dwellers," IOL, September 4, 2019, <https://www.iol.co.za/the-star/news/bheki-cele-blames-joburg-violence-on-cleveland-and-denver-hostel-dwellers-31805416> (accessed October 5, 2019).

⁶⁷ "Gauteng violence: Death toll rises after two burned bodies found in Alexandra," News24, September 4, 2019, <https://www.news24.com/SouthAfrica/News/two-south-africans-one-zimbabwean-woman-among-5-killed-during-violent-gauteng-unrest-20190904> (accessed October 9, 2019).

⁶⁸ "Zimbabwean woman recounts how husband was beaten, burnt to death in Katlehong," IOL, September 7, 2019, <https://www.iol.co.za/saturday-star/news/zimbabwean-woman-recounts-how-husband-was-beaten-burnt-to-death-in-katlehong-32498218> (accessed October 15, 2019).

⁶⁹ "Two people dead in a stampede as shops are looted," GroundUp, September 9, 2019, <https://www.groundup.org.za/article/two-people-dead-stampede-shops-are-looted/> (accessed October 25, 2019).

⁷⁰ "One dead, five injured in Joburg CBD clashes," eNCA, September 8, 2019, <https://www.enca.com/news/one-dead-five-injured-joburg-cbd-clashes> (accessed October 5, 2019); "Second person dies in deadly Joburg unrest," News24, September 9, 2019, <https://www.news24.com/SouthAfrica/News/second-person-dies-in-deadly-joburg-unrest-20190909> (accessed October 5, 2019).

⁷¹ "Joburg Violence Claims Second Life," Eyewitness News, September 9, 2019, <https://ewn.co.za/2019/09/09/joburg-violence-claims-second-life> (accessed October 5, 2019).

speaking a local language, as well as routinely called “*kwerekwere*,” a derogatory slang word used by Black South Africans to mean “foreigner.”

Congolese street vendor who has been in South Africa since 2001, “Mwenebanga” told Human Rights Watch that on April 12, 2019, he was selling clothing on the street in Johannesburg when nine South Africans carrying sjamboks, heavy leather or synthetic whips, approached him. Mwenebanga said he first attempted to engage with them in English, but when they rejected his efforts, he tried to run away but was caught and beaten. They stole all the clothing he intended to sell, losing his income for his family for which he is the sole breadwinner.⁷² His wife “Rehema” had previously sold second-hand clothing at flea markets in Johannesburg but told Human Rights Watch that she quit because of excessive harassment from South African locals.⁷³

Jean told Human Rights Watch that while standing outside his shop in Johannesburg in June 2019, several men who he believed were South African approached him with guns. He ran and they followed for some distance, firing six bullets at him but thankfully missing him.⁷⁴

“Chola,” a Zambian artist, told Human Rights Watch that in August 2019, South Africans looted his metal workshop in Alberton, Ekurhuleni. Among those involved were his South African employees. He said: “...I thought they were loyal to me. I thought they were more than employees, that they were my friends, so this was very sad for me.”⁷⁵ Chola has been in South Africa since 2008 as an artist on a valid visa and was attacked in 2008 when there was xenophobic violence. He said, “Attacks after attacks...I asked, ‘how can I take your job if I employ your guys?’”⁷⁶

Attacks and Harassment Against Students and Teachers in Schools

Three students and two teachers told Human Rights Watch that they have faced xenophobia in schools. “Samuel,” 11, born in South Africa to Congolese parents told Human Rights Watch that students in his public school in Johannesburg call him “*kwerekwere*” daily and tell him, “You’re ugly! Foreigner! Go back to your country! *Kwerekwere!*”⁷⁷ Samuel told his teacher and she told the principal who sent a letter home

⁷² Human Rights Watch interview with Mwenebanga on November 14, 2019 in Johannesburg.

⁷³ Human Rights Watch interview with Rehema on November 21, 2019 in Johannesburg.

⁷⁴ Human Rights Watch interview with Jean on November 14, 2019 in Johannesburg.

⁷⁵ Human Rights Watch interview with Chola on February 11, 2020.

⁷⁶ Ibid.

⁷⁷ Human Rights Watch interview with Samuel on November 21, 2019 in Johannesburg.

with the students. Reporting such interactions to the teacher did not help him, as they then taunted him, “You’re afraid of us.” Thereafter, his teacher advised him to avoid the other students. When asked how he would like the school to respond to such incidents, Samuel said, “They can stand with me and tell them that what they are doing is not nice.”⁷⁸

“Keshia,”¹⁰ also born in South Africa to Congolese parents attends a different public school in Johannesburg. Similarly, students call her “*kwerekwere*” and say, “You just come here and do nothing, foreigner. You’re stupid. You ugly thing. This is why you have nothing.”⁷⁹ Her teachers disciplined them by calling their parents, but things did not change, so she was told to avoid them. The harassment continued, and she and other foreign students told them to stop, to which their harassers replied, “You’re not my mother! You’re not my father!” In response to what she would have wanted her school to do, she firmly said, “they should be expelled.” She elaborated that if a student can be expelled for cheating, then the students should be expelled for this constant, xenophobic harassment and intimidation. Despite having never been to the Democratic Republic of Congo, the xenophobia she has experienced makes her associate that as her home and asks her parents why her family has to be in South Africa.⁸⁰

When Keshia fell victim to a hit and run on her walk to school on September 16, 2019, her classmates and other students on her route told everyone not to help because she was a “*kwerekwere*.”⁸¹ No one stopped to assist her out of the street until another female non-national recorded the vehicle’s identification number and notified her parents. They opened a case at Jeppe police station, but those responsible have not been found.⁸²

At a public school in Cape Town, Nathalie, a grade-10 student from the Democratic Republic of Congo who had been regularly harassed, was beaten on August 27, 2019 by approximately eight students who were unhappy that a foreigner was elected class monitor.⁸³ She spent nine days in the hospital.⁸⁴ Her mother told Human Rights Watch that the students’ parents sent her family messages threatening to kill them if the students were disciplined.⁸⁵ Nathalie’s family opened cases at Woodstock and Cape Town police

⁷⁸ Ibid.

⁷⁹ Human Rights Watch interview with Keshia on November 21, 2019 in Johannesburg.

⁸⁰ Ibid.

⁸¹ Human Rights Watch interview with Keshia on July 20, 2020.

⁸² Ibid.

⁸³ Human Rights Watch interview with Nathalie’s mother on July 1, 2020.

⁸⁴ Ibid.

⁸⁵ Human Rights Watch interview with Nathalie’s mother on July 1, 2020.

stations, but according to her mother, no progress has been made. The Western Cape Education Department completed their investigation into the incident, concluding that it “arose out of malice, not xenophobia.”⁸⁶ The department wrote to Human Rights Watch that they worked with a local youth empowerment organization to engage the students in an art museum’s program that would promote social cohesion and allow the children to “vent their feelings through the medium of art.” They ultimately decided that no disciplinary action would be taken against the students because, in their words, the students are “working together beautifully.”⁸⁷ As of August 2020, Nathalie had not returned to school since her release from the hospital because she was too fearful of what her attackers, who were all still attending the school, may do to her.⁸⁸

“Trevor,”³¹ a Zimbabwean teacher who has been living in South Africa since 2008 told Human Rights Watch that his students, aged 5-17, at a private school in Alberton, Gauteng call him and the nine foreign students “*kwerekwere*” during his lessons while laughing.⁸⁹ He said, “I cannot voice these issues because [the schools] act like they have done you a favor by hiring you in the first place. I am treated like I took a South African’s job” despite having over seven years of teaching experience in South Africa. In his previous teaching position at a public school, Trevor received a one month notice before being replaced by a recent South African graduate.

⁸⁶ Letter addressed to Human Rights Watch from Provincial Minister of Education, Western Cape Debbie Schäfer, dated July 14, 2020. Letter on file with Human Rights Watch.

⁸⁷ Ibid.

⁸⁸ Human Rights Watch interview with Nathalie's mother on July 1, 2020.

⁸⁹ Human Rights Watch interview with Trevor on November 13, 2019 in Alberton.



“Trevor,” a teacher originally from Zimbabwe, showed Human Rights Watch the back window of the private school in Alberton in Gauteng that employs him from which he jumped to flee from the armed mob that broke into his school in September 2019. © 2019 Kristi Ueda

After receiving WhatsApp warnings in September 2019 that an armed mob was heading towards the school, Trevor and the three other foreign teachers at his private school requested permission to leave the school grounds, but the director, a South African, did not believe the threats and refused.⁹⁰ Trevor showed Human Rights Watch a window at the back side on the second floor of the building through which he escaped as the mob entered through the front of the building. He said that two of the other teachers safely shut themselves in a room, but the other foreign teacher was caught and beaten by the mob. According to Trevor, the police came to stop the attack, but no arrests were made.⁹¹

By Government and Law Enforcement Officials

Interviewees who are non-nationals told Human Rights Watch that it is common to be profiled, stopped, and searched by SAPS and Metro Police. Chola, the Zambian artist, told Human Rights Watch that in December 2019, the police stopped his car for no obvious reason near the Johannesburg airport.⁹² Chola asked the officer, “Is it fair to be living here in fear?” to which he laughed and said, “If you do not have money, then just go on ahead.” He was allowed to leave without any incident.⁹³ Then in January 2020, the police

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Human Rights Watch interview with Chola on February 19, 2020.

⁹³ Ibid.

conducted a strip search of his car in Johannesburg and detained his foreign passenger “James.” James was taken to the police station and Chola had to fetch James’s passport from his home and take it to the police station to secure his release.⁹⁴

Counterfeit Goods Raids

South African President Cyril Ramaphosa has committed the government to cracking down on the importation and sale of counterfeit goods to help the local economy and protect South African jobs.⁹⁵ He stated that between July 2019 and September 2019, the South African Revenue Service conducted 2,500 raids that resulted in the confiscation of counterfeit goods with an estimated value of over 1 billion Rand (US\$60 million).⁹⁶ Provincial governments have assumed this commitment as well. On January 23, 2020, Gauteng Premier David Makhura said that operations in 2019 confiscated over 5 billion Rand (US\$300 million) worth of counterfeit goods in the province.⁹⁷ Local South African civilians whose roles are to identify counterfeit goods have accompanied SAPS and Metro Police in these raids to detect and confirm counterfeit goods.⁹⁸

Shop owners and traders told Human Rights Watch that raids on counterfeit goods were conducted in discriminatory and abusive ways. For instance, “Tekeda,” a member of the Ethiopian business community in Johannesburg Central Business District, said raids are repeatedly carried out in shopping areas predominantly run by non-nationals.⁹⁹ Tekeda alleged that South African shop owners give tips to the police and request them to raid foreign-owned or rented shops. He has tried to form a business community with his South African counterparts, but they have refused, saying that they did not want foreigners conducting business because they take away business opportunities from South Africans. Tekeda exclaimed, “I learned business in [Europe], yet I face more discrimination here as a Black person in South Africa [than in Europe].”¹⁰⁰

⁹⁴ Ibid.

⁹⁵ “Ramaphosa: SARS taking the lead in curbing illegal Chinese clothing imports,” *fin24*, September 16, 2019, <https://www.fin24.com/Economy/South-Africa/ramaphosa-sars-taking-the-lead-in-curbing-illegal-chinese-clothing-imports-20190916> (accessed March 4, 2019).

⁹⁶ Ibid.

⁹⁷ David Mahura’s Twitter account, https://twitter.com/David_Makhura/status/1220299921032650752?s=20 (accessed September 8, 2020).

⁹⁸ Human Rights Watch has not been able to further explore and confirm details of these deaths because such investigations have been thwarted by Covid-19 travel restrictions.

⁹⁹ Human Rights Watch interview with Tekeda on November 13, 2019 in Johannesburg; Human Rights Watch has not been able to explore this allegation because such investigations have been thwarted by Covid-19 travel restrictions.

¹⁰⁰ Ibid.

“Negasi,” an Ethiopian shop owner, shared his experiences during counterfeit goods raids with Human Rights Watch. He and other shop owners learned from a police leak that a raid in the predominantly Ethiopian business area between Rahima Moosa Street and Von Wielligh Street in Johannesburg Central Business District was scheduled for some time in June 2019, so he requested meetings with SAPS and the Johannesburg Metro Police, during which he complained that previous raids had been carried out with violence.¹⁰¹ On June 9, 2019, a few days after the meeting, the counterfeit goods raid began and turned violent. Local civilians working with the police to identify counterfeit goods in the raid wore protective armor. Police officers released tear gas and shot rubber bullets into the crowd as they exited their vehicles, forcing shop owners and street vendors to flee.¹⁰² Negasi said that as the police and the local civilians who identified counterfeit goods were making their way into the shops, they beat men and women. He said that an acquaintance was hit in the leg seven times by rubber bullets. Once inside, Negasi said the police and their civilian colleagues destroyed security cameras and goods, and inscribed graffiti on the stalls and merchandise.¹⁰³

Negasi showed Human Rights Watch a video from a hidden security camera that was not destroyed, showing police and their civilian colleagues in protective gear carrying guns as they released explosives in the shops.¹⁰⁴ The video showed smoke filling the stalls as the police and their civilian colleagues shoved and hit fleeing shop owners. They then destroyed security cameras and ransacked the shops, even breaking the shelves.¹⁰⁵

Despite the government stating that the raids were meant to preserve and strengthen the local economy, Tekeda told Human Rights Watch that police often sell counterfeit goods back to the markets.¹⁰⁶ On August 8, 2019, seven police officers were arrested for selling counterfeit goods seized from the previous day’s raids in Johannesburg Central Business District.¹⁰⁷ Human Rights Watch wrote to the Minister of Police and Minister of Justice and Correctional Services in June 2020 to ask for further information on this investigation, but there has been no response at the time of writing this report. Similarly, during counterfeit

¹⁰¹ Human Rights Watch interview with Negasi on November 21, 2019 in Johannesburg.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ “Ramaphosa: SARS taking the lead in curbing illegal Chinese clothing imports,” *fin24*, September 16, 2019, <https://www.fin24.com/Economy/South-Africa/ramaphosa-sars-taking-the-lead-in-curbing-illegal-chinese-clothing-imports-20190916> (accessed March 4, 2019); Human Rights Watch interview with Tekeda on November 13, 2019 in Johannesburg.

¹⁰⁷ “Seven police officers arrested after attempting to resell counterfeit goods,” *SABC News*, August 8, 2019, <https://www.sabcnews.com/sabcnews/seven-police-officers-arrested-after-attempting-to-resell-counterfeit-goods/> (accessed March 11, 2020).

goods raids in February and March 2020 in Diepsloot, there were reports of police officers stealing money and goods from Ethiopian shop owners.¹⁰⁸

Documentation Raids

In line with what President Ramaphosa and the ruling African National Congress promised supporters at a rally in January 2019, the government has cracked down on undocumented foreigners.¹⁰⁹ The Department of Home Affairs, SAPS, and Metro Police have jointly conducted documentation raids throughout the country where they visit homes or randomly stop people on the street to verify their legal status in the country. Some foreigners were taken to police stations to be arrested and processed for deportation, while others were detained for further investigation.

These raids are typically conducted in areas known to have many non-nationals living or working there. Some of these raids, Human Rights Watch found, have been conducted in inhumane and degrading ways. Ethiopian vendor “Ahmed” who has been in South Africa since 2007 described to Human Rights Watch an incident in July or August 2019 when a police officer stopped him on the street in Johannesburg Central Business District around noon, asking for documentation. After complying and presenting his up-to-date and valid Section 24 refugee permit, the officer ripped and threw his document on the floor.¹¹⁰ He said he was humiliated by being placed in a police vehicle like a criminal despite showing proper documentation.

Human Rights Watch also spoke to brothers Syed and “Abeer,” Bangladeshi shop owners in Johannesburg Central Business District who were detained during the August 2019 raids.¹¹¹ Syed said he was eating at a restaurant when the police came and demanded to see his documents. Despite showing his valid Section 22 asylum seeker permit, his documents were seized and he was arrested and taken to the police station.¹¹² On the same day, police officers woke Abeer at his home and took him into custody after

¹⁰⁸ “Ethiopian shop owners in Diepsloot say police are stealing their goods and cash during raids,” *GroundUp*, March 9, 2020, <https://www.groundup.org.za/article/ethiopian-shopowners-diepsloot-say-police-are-stealing-their-goods-and-cash-during-raids/> (accessed March 11, 2020).

¹⁰⁹ ANC secretary-general Ace Magashule said “This issue of undocumented foreigners was raised by the general society in South Africa. That is why the ANC wants to focus on it and deal with it once and for all.” “ANC takes a hard line on migrants,” *News 24*, January 21, 2019, <https://city-press.news24.com/News/anc-takes-a-hard-line-on-migrants-20190121> (accessed September 8, 2020).

¹¹⁰ Human Rights Watch interview with Negasi and Ahmed on November 21, 2019 in Johannesburg. Negasi served as translator for Ahmed.

¹¹¹ Human Rights Watch interview with Syed and Abeer on November 20, 2019 in Johannesburg. Syed served as translator for Abeer.

¹¹² *Ibid.*

presenting his documents as well.¹¹³ They said that the police officers hit them and other detainees with their hands while they were being taken away and placed in police vans.

In January 2020, the police carried out a wave of documentation raids in Diepsloot, Johannesburg, targeting both homes and businesses.¹¹⁴ By February 2, official figures said that 157 foreigners were arrested, of whom 23 had legal documents and were released, while the remaining 134 were undocumented and processed for deportation.¹¹⁵ As the raids continued until the end of February, the total numbers of arrests, including those of foreigners who had the correct documentation, would have been much higher.¹¹⁶

“Fortune,” a non-national living in Diepsloot, told Human Rights Watch that his neighbor “Robert,” who had previously renewed his Section 22 asylum seeker permit every three months but now had expired documents, was arrested on February 1 and was held with twenty other men at Diepsloot police station for 26 days until he was released without explanation.¹¹⁷

“Paul,” 32, a community activist in Diepsloot, told Human Rights Watch that he went to Diepsloot police station to discuss the harassment of foreigners, but the station commander refused to speak to him.¹¹⁸ Human Rights Watch attempted to speak to leadership at the station in mid-February 2020, but there has been no response to multiple phone calls.

¹¹³ Ibid.

¹¹⁴ “Diepsloot lockdown: Police raid homes, arrest undocumented foreigners [video],” *The South African*, January 27, 2020, <https://www.thesouthafrican.com/news/diepsloot-latest-updates-police-raid-homes-arrest-undocumented-foreigners-video/> (accessed February 23, 2020).

¹¹⁵ “Immigrants under attack after police officer’s murder in Diepsloot,” *IOL*, February 2, 2020, <https://www.iol.co.za/sundayindependent/news/immigrants-under-attack-after-police-officers-murder-in-diepsloot-41945703> (accessed February 23, 2020).

¹¹⁶ Human Rights Watch interview with Fortune on February 20, 2020.

¹¹⁷ Human Rights Watch interview with Fortune on February 28, 2020.

¹¹⁸ Human Rights Watch interview with Paul on February 7, 2020.

Discrimination and Barriers to Basic Services

Official Responses to Xenophobic Incidents

Indifference Toward Victims

Victims of xenophobic attacks and other incidents told Human Rights Watch that the South African police and other authorities have often been indifferent to their complaints. Tekeda told Human Rights Watch that his community provided detailed information to the police about the lootings and destruction of property in Johannesburg Central Business District, including perpetrators' house numbers during the September 2019 riots. Yet, Tekeda said he was not aware of any police investigations into the violence and the police neither followed up, nor requested further information from neither him nor fellow shop owners.¹¹⁹ Human Rights Watch wrote to the Minister of Police in June 2020 to ask if there have been any investigations into this, but there has been no response at the time of writing this report.

Other victims told Human Rights Watch that the police officers at their local stations claimed that they could not open cases but provided no explanation as to why not. Mwenebanga, the Congolese street vendor, ran to a police station in Johannesburg on April 12, 2019 after South African men beat and robbed him, hoping that the police would protect him and arrest the men.¹²⁰ However, he said the police told him that they cannot open a case. After Mwenebanga asked why not multiple times, he was finally handed an affidavit that recorded his complaint, but not a SAPS Crime Administration System (CAS) number. The affidavit states his name and that he reported to the police station that he was attacked and that two bags of secondhand clothes were taken from him. According to SAPS's procedure for reporting a crime, affidavits are not a procedural step in opening a case.¹²¹ He said that he was not able to follow up on this situation because SAPS did not have a record of the affidavit and without a CAS number, there is no investigation.¹²² Human Rights Watch wrote to the Minister of Police in June 2020 for clarification on the role of affidavits, but there has been no response at the time of writing this report.

¹¹⁹ Human Rights Watch interview with Tekeda on November 13, 2019 in Johannesburg.

¹²⁰ Human Rights Watch interview with Mwenebanga on November 14, 2019 in Johannesburg.

¹²¹ South African Police Service, "Reporting a Crime," undated, https://www.saps.gov.za/services/report_crime.php (accessed September 8, 2020).

¹²² Human Rights Watch interview with Mwenebanga on November 14, 2019.

Jean told Human Rights Watch that he contacted SAPS after his shop in Johannesburg was looted on September 2, 2019. They told him that there was too much violence so they could not cover the entire city and respond to all of the violence. The police did open a case regarding his complaint the following day, but Jean said he was not aware of any follow up by the police such as assigning a police detective to conduct investigations, and that to date no one was charged in relation to his case.¹²³

“Farooq,” a Pakistani shop owner in Pretoria who has been in South Africa since 2007 told Human Rights Watch that he has opened cases with the police whenever his shop has been looted, but has never heard back.¹²⁴ He said that when he has called to inquire about his SAPS CAS numbers, he has been told that there were no investigations being conducted into his cases.

Congolese national and activist who has been in South Africa since 2004, “Emmanuel” described to Human Rights Watch an incident in Cape Town in which a taxi driver slapped him after he pronounced the name of a place without the local accent.¹²⁵ Emmanuel said other taxi drivers noticed the altercation, and about twenty of them joined and beat him, then took his bag, before running away. Emmanuel said he went to the Cape Town police station the next day and provided them with the identity of the taxi driver. The police later told him that they saw the taxi driver on the street that day he reported the incident, but did nothing, so Emmanuel called the police a few days later when he saw the taxi driver again. However, the police officer said that the case was already closed and there was nothing to be done, although no investigation was conducted.¹²⁶ A frustrated Emmanuel declared, “For foreigners, the justice system does not exist.”

Discouraged by previous attempts to acquire protection or justice from the police during or after xenophobic incidents, non-nationals told Human Rights Watch that in the future, it is unlikely that they would file complaints with the police. The same frustrations are experienced by foreigners even when they have experience of being activists and are more accustomed to advocating for themselves and their community.

Tadesse Yemane, an Ethiopian shop owner, is also a community activist in Johannesburg Central Business District. He told Human Rights Watch that he has shared information, videos, and text and voice messages threatening violence against foreigners with the

¹²³ Human Rights Watch interview with Jean on November 14, 2019 in Johannesburg.

¹²⁴ Human Rights Watch interview with Farooq on November 22, 2019.

¹²⁵ Human Rights Watch interview with Emmanuel on November 12, 2019 in Cape Town.

¹²⁶ Ibid.

police, but they have not taken any action to prevent the threatened violence.¹²⁷ He said that he has requested and attended meetings with the police, including top SAPS officials at the national level and in Johannesburg, to discuss the experiences of foreigners and to better understand the parameters of allowable police responses to complaints. According to him, in addition to their inaction in preventing violence before the threatened incidents occur, they have refused to meet with him immediately after violent incidents. Therefore, he said there is no accountability or discussion on their failure to respond to credible threats to prevent or minimize harm.

Similarly, African Diaspora Forum chairperson and lawyer, Vusumuzi Sibanda, who is originally from Zimbabwe, informed Human Rights Watch that SAPS received the same social media text and voice messages inciting violence that went viral throughout the nation before the September 2019 riots.¹²⁸ Yet, when he has asked SAPS, they said there have been no investigations conducted to identify the senders or speak to known senders. Such impunity has emboldened Sisonke People’s Forum, the self-described “nationalist organization” to be featured in a *New Frame* article admitting to penning the flyers calling for the September 2, 2019 national shutdown without fear of consequences.¹²⁹

Sibanda told Human Rights Watch that when he called the police to report shutdowns that later deteriorated into violence and lootings in Johannesburg in September 2019, the police said they could not enter the areas where the violence was happening because the situation was too dangerous.¹³⁰ Sibanda also said he shared videos of the September 2019 xenophobic violence clearly showing perpetrators’ faces with SAPS.¹³¹ However, according to Sibanda, those perpetrators were never arrested, much less prosecuted. Human Rights Watch wrote to the Minister of Police in June 2020 for clarification on these matters, but there has been no response at the time of writing this report. Isaiah Mombilo, chairperson of Congolese Civil Society of South Africa, said when he accompanied victims to the police station to report xenophobic violence, the police turned them away. “South Africa is not safe for foreign nationals. We want solutions,” he told Human Rights Watch.¹³²

¹²⁷ Human Rights Watch interview with Tadesse Yemane on November 21, 2019 in Johannesburg.

¹²⁸ Human Rights Watch interview with Vusumuzi Sibanda on November 13, 2019 in Johannesburg.

¹²⁹ “The people who sparked the xenophobic violence,” *New Frame*, September 11, 2019, <https://www.newframe.com/the-people-who-sparked-the-xenophobic-violence/> (accessed October 9, 2019); Sisonke People’s Forum (st)’s Twitter account, <https://twitter.com/PoliticsSPF/status/1279046709499310080?s=20> (accessed September 8, 2020).

¹³⁰ Human Rights Watch interview with Vusumuzi Sibanda on November 13, 2019 in Johannesburg.

¹³¹ *Ibid.*

¹³² Human Rights Watch interview with Isaiah Mombilo on November 12, 2019 in Cape Town.

Frustrated by such indifference from government and law enforcement officials, activists said they have tried to better understand official policies in an attempt to get justice for victims of xenophobia. Yemane told Human Rights Watch that he has spoken to police about how counterfeit goods raids lead to unprovoked violence against foreigners and asked what can be done to end such violence.¹³³ The police responded to him that “people who have nothing to hide do not run.”¹³⁴ However, Yemane said that the people run because they have no choice when those conducting the operation begin shooting as they exit their vehicles. He elaborated, “I feel like an alien in a country called home...I lose faith in humanity.”¹³⁵

Moreover, Mwenebanga told Human Rights Watch that he and other foreigners throughout Johannesburg tried to join Community Policing Forums, which are initiatives to facilitate communications between SAPS and the communities they serve. However, they were excluded because its leaders insisted there was no more space in the forums. As far as Mwenebanga could tell, the leaders did not consider that opening the forums to foreigners would be of any benefit to the community, even South Africans.¹³⁶

Repatriation in the Face of Impunity

The failure of SAPS to respond to the violence and xenophobia experienced by non-nationals furthers the goal of the xenophobic attacks by making non-nationals want to leave South Africa. For example, 88 Malawians who sought refuge from the riots in March 2019 at Sherwood Hall requested repatriation to Malawi.¹³⁷ Then in September 2019, in Katshehong, Ekurhuleni out of the approximately 800 foreigners who needed temporary housing in community halls for at least two weeks, media reports said 487 of them wanted to return home because they did not feel safe remaining in South Africa.¹³⁸

The Department of Home Affairs officials assisted the 487 non-nationals requesting repatriation with obtaining documentation to facilitate the return back to their countries of

¹³³ Human Rights Watch interview with Tadesse Yemane on November 21, 2019 in Johannesburg.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Human Rights Watch interview with Mwenebanga on November 14, 2019 in Johannesburg.

¹³⁷ Ibid.

¹³⁸ “Xenophobic victims bussed back home,” *New Frame*, September 13, 2019, <https://www.newframe.com/xenophobia-victims-bussed-back-home/> (accessed October 15, 2019).; “Zimbabwean woman recounts how husband was beaten, burnt to death in Katshehong,” *IOL*, September 7, 2019, <https://www.iol.co.za/saturday-star/news/zimbabwean-woman-recounts-how-husband-was-beaten-burnt-to-death-in-katshehong-32498218> (accessed October 15, 2019).

origin.¹³⁹ Sisonke People’s Forum, the self-described “nationalist organization” that calls for “blanket deportations” of foreigners and penned the flyer calling for the September 2019 shutdown, has even claimed these repatriations as their successes.¹⁴⁰

The widow of Sithole, the Zimbabwean killed on September 5 or 6 while fleeing his burning home in Katlehong, Ekurhuleni, was housed at Tsolo Community Hall. Department of Home Affairs arranged for her voluntary repatriation back to Zimbabwe, but she is still waiting for justice, as the police did not open a case to hold people accountable for her husband’s gruesome death.¹⁴¹

Denial of Xenophobia and Its Tacit Approval

Following incidents of xenophobia, Human Rights Watch has tracked varied public responses by South African authorities, ranging from denial to tacit approval. Denial of xenophobia pervades different levels of government and is articulated when discussing both the intentions of perpetrators of xenophobic attacks and the impacts felt by their victims. The tendency to label incidents as “criminal” but not xenophobic creates a false dichotomy as though criminality and xenophobia are mutually exclusive.

For instance, in April 2019, then Minister of International Relations and Co-operation Lindiwe Sisulu stressed that recent attacks on Malawians were criminal, not xenophobic.¹⁴² She wondered why such widespread violence has occurred since 2008 and claimed that even non-governmental organizations have not understood its causes.¹⁴³ However, academic scholars and various organizations told Human Rights Watch that they have contacted different levels of the government, from municipal to national, to discuss their research and analyses on the root causes of xenophobic violence.

¹³⁹ “City shelters assist displaced foreign nationals,” *SANews*, September 10, 2019, <https://www.sanews.gov.za/south-africa/city-shelters-assist-displaced-foreign-nationals> (accessed April 5, 2020).

¹⁴⁰ Sisonke People’s Forum (st)’s Twitter account, <https://twitter.com/PoliticsSPF/status/1279046709499310080?s=20> (accessed September 8, 2020); Sisonke People’s Forum (st)’s Twitter account, <https://twitter.com/PoliticsSPF/status/1274049250587009034?s=20> (accessed September 8, 2020). Sisonke People’s Forum (st)’s Twitter account, <https://twitter.com/PoliticsSPF/status/1274999100010881034?s=20> (accessed September 8, 2020).

¹⁴¹ Human Rights Watch interview with African Diaspora Forum on November 20, 2019 in Johannesburg.

¹⁴² “Sisulu says NGOs roped in to find causes, solutions to xenophobia,” *IOL*, April 14, 2019, <https://www.iol.co.za/news/south-africa/sisulu-says-ngos-roped-in-to-find-causes-solutions-to-xenophobia-21112053> (accessed February 15, 2020).

¹⁴³ *Ibid.*

Sisulu's successor Naledi Pandor blamed the media for unfairly portraying South Africa and its citizens as xenophobic.¹⁴⁴ Without mentioning the word "xenophobia," she referred to reports of xenophobic incidents as "fake news on YouTube" and "anti-African violence" in a meeting with representatives of African diaspora communities in September 2019.¹⁴⁵ She then deflected by discussing problems occurring in other African countries.¹⁴⁶

Following riots in Richards Bay Central Business District, KwaZulu-Natal in July 2019, police spokesperson Nqobile Gwala wrote: "This is NOT xenophobia. The deceased were allegedly attacked after they stabbed a bus driver. It has nothing to do with people's nationality, it is just a criminal matter that is under investigation."¹⁴⁷ Her response ignored the fact that other foreigners were indiscriminately beaten and their cars and shops were looted and torched in the same incident.¹⁴⁸

Such blatant denial of anti-foreigner and anti-immigrant sentiments is a refusal to accept the gravity of the violence and the scale of the problem that faces South Africa. One consequence is that the government does not take opportunities to discourage or underscore how wrong it is to stereotype entire groups.

During the September 2019 violence, Johannesburg Metro Police Department Chief Tembe denied xenophobia, saying the violence and lootings were "pure criminality because some of the shops that were burned...belonged to South Africans."¹⁴⁹

Following the classroom attack on Nathalie, the grade-10 learner at a public school in Cape Town originally from the Democratic Republic of Congo, the Western Cape Education Department conducted an investigation. They ultimately found that the incident "arose out of malice, not xenophobia."¹⁵⁰

¹⁴⁴"Pandor slams media over xenophobia," video clip, September 16, 2019, YouTube, <https://www.youtube.com/watch?v=jbv6qTikxE&feature=youtu.be> (accessed September 8, 2020).

¹⁴⁵"Naledi Pandor lays blame across the African political spectrum," *Daily Maverick*, September 20, 2019, <https://www.dailymaverick.co.za/article/2019-09-20-naledi-pandor-lays-blame-across-the-african-political-spectrum/> (accessed February 15, 2020).

¹⁴⁶ Ibid.

¹⁴⁷ "Migrants and refugees live in fear after taxi rank violence," *New Frame*, n.d. <https://www.newframe.com/migrants-and-refugees-live-in-fear-after-taxi-rank-violence/> (accessed February 15, 2020).

¹⁴⁸ "WATCH | Richards Bay residents chase drug dealers from CBD after murder," *Times LIVE*, July 25, 2019, <https://www.timeslive.co.za/news/south-africa/2019-07-25-watch-richards-bay-residents-chase-drug-dealers-from-cbd-after-murder/> (accessed December 16, 2019).

¹⁴⁹ "Joburg Violence Claims Second Life," *Eyewitness News*, September 9, 2019, <https://ewn.co.za/2019/09/09/joburg-violence-claims-second-life> (accessed October 5, 2019).

¹⁵⁰ Letter addressed to Human Rights Watch from Provincial Minister of Education, Western Cape Debbie Schäfer, dated July 14, 202.

Some political actors have also tacitly approved of or encouraged xenophobia by accusing non-nationals of being criminals or pitting them against South African locals. On August 1, 2019 Community Safety Gauteng Member of the Executive Council, Faith Mazibuko, accused foreigners who fought back during a counterfeit goods raid in Johannesburg Central Business District of being “ungovernable” and striving “to turn [the] country into a lawless Banana Republic.”¹⁵¹

Gauteng premier David Makhura contributed to the us-versus-them narrative by tweeting, “We are cleaning up our [Central Business District]. We will not rest until we take our city back” as he joined police in counterfeit goods raids on August 7, 2019 that resulted in the arrests of hundreds of undocumented foreigners.¹⁵² The statement he released the following day appeared to pit South Africans against foreigners, stating that “as South Africans we must work collectively to build our economy.”¹⁵³

In August 2019, then Johannesburg mayor Herman Mashaba blamed undocumented foreigners for the shortage of medication, saying that “unfortunately we cannot send them back...we have got to treat them.”¹⁵⁴ Furthermore, on October 26, 2019, he tweeted a photograph of a breakdown of arrests of non-nationals from Malawi, Nigeria, Tanzania, Uganda, and Zimbabwe.¹⁵⁵ The numbers of arrests spanning from 2016-2019 in Johannesburg, were high but were mostly for driving under the influence of alcohol. He did not reveal the number of arrests of South Africans, or of European, Asian or other foreigners, recklessly misrepresenting the picture of crime in the city and placing blame on African foreigners.

¹⁵¹ South African Police Service media statement, “Police retreat from attackers in Johannesburg CBD to avert bloodshed,” August 1, 2019, <https://www.saps.gov.za/newsroom/msspeechdetail.php?nid=21545> (accessed September 8, 2020).

¹⁵² David Makhura’s Twitter account, https://twitter.com/david_makhura/status/1159099468823879686 (accessed September 8, 2020).

¹⁵³ South African Police Service media statement, “Joint Statement from the offices of Minister of Police, Gauteng Provincial Commissioner and Gauteng Premier,” August 8, 2019, <https://www.saps.gov.za/newsroom/selnewsdetails.php?nid=21636> (accessed September 8, 2020).

¹⁵⁴ “Mayor Herman Mashaba comments on undocumented foreigners and accusations of xenophobia,” video clip, August 12, 2019, YouTube, <https://www.youtube.com/watch?v=VtwjvqMcWww&feature=youtu.be> (accessed September 8, 2020).

¹⁵⁵ Herman Mashaba’s Twitter account, <https://twitter.com/HermanMashaba/status/1188018999327690752?s=20> (accessed September 8, 2020).



Former Johannesburg Mayor Herman Mashaba’s Tweet on October 26, 2019 that displays arrests of people of five different nationalities from 2016 to 2019 with the hashtag #WorldCupofCrime. © 2020 Private

Following xenophobic riots and attacks in Diepsloot in January 2020, Home Affairs Minister Motsoaledi, said, “Most people are not documented because they came here to commit a crime. They came as criminals, not as migrants. The fact that people just remain here and kill police, it is because they don’t want to be seen, and they don’t want to be known. They don’t want their fingerprints to be captured. Don’t confuse them with migrants.”¹⁵⁶ Such language leaves all non-nationals susceptible to attack. Human Rights Watch wrote to the Minister of Justice and Correctional Services in June 2020 to request the number of investigations undertaken related to government officials’ alleged tacit approval or encouragement of xenophobia, but there has been no response at the time of writing this report.

¹⁵⁶ “Immigration officials to be deployed to crime-ridden Diepsloot,” *SABC News*, January 25, 2020, <https://www.sabcnews.com/sabcnews/immigration-officials-to-be-deployed-to-crime-ridden-diepsloot/> (accessed February 3, 2020).

Arbitrary and Abusive Detention

After being arrested for allegedly being undocumented, many non-nationals have been detained in police station cells and deportation centers, where they have been subjected to abuse, denied legal representation, and not brought to court within the prescribed 48 hours.¹⁵⁷ Human Rights Watch wrote to the Minister of Justice and Correctional Services in June 2020 to inquire if there were any investigations into foreigners being held for over 48 hours without being granted a first hearing or granted legal representation, but there has been no response at the time of writing this report.

During documentation raids in July or August 2019, Ethiopian vendor Ahmed told Human Rights Watch that even after showing his documents, he was taken to a police station in Johannesburg and asked to pay a bribe of 1,000-2,000 Rand (US\$60-120), which Ethiopian shop owner Negasi said was not unusual.¹⁵⁸

After being arrested in a documentation raid by police, brothers Syed and Abeer were beaten by the officers and taken to Johannesburg Central Police Station in police vans.¹⁵⁹ They told Human Rights Watch that their fingerprints were taken at the station, but they were not given case numbers. SAPS told them that they would be held until their documents and status were verified. Each day, they received two slices of bread and water. Syed said there was no room to sit, with more than one hundred people in one cell that he estimated to be 250 square feet at most.¹⁶⁰ Moreover, their other brothers were not allowed to visit them while in detention. Syed called a lawyer while in the cell, but the lawyer said that there was nothing he could do.¹⁶¹

Syed was released after two days once his status was verified. He told Human Rights Watch that he felt very sick from the poor sanitation conditions in detention.¹⁶² Meanwhile Abeer was detained for one week because he said that the officers told him they had lost his documents, an allegation that Human Rights Watch has been unable to confirm. As a result, he was transferred to and held at Lindela Repatriation Centre, a deportation center for undocumented migrants, in Krugersdorp for three days until Syed was able to hire a

¹⁵⁷ South African Police Service, Frequently Asked Questions, "What are my rights when arrested or detained?" n.d. <https://www.saps.gov.za/faqdetail.php?fid=8> (accessed September 8, 2020).

¹⁵⁸ Human Rights Watch interview with Negasi and Ahmed on November 21, 2019 in Johannesburg. Negasi served as translator for Ahmed.

¹⁵⁹ Human Rights Watch interview with Syed and Abeer on November 20, 2019 in Johannesburg. Syed served as translator for Abeer.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² Ibid.

lawyer to help verify his status.¹⁶³ Human Rights Watch wrote to the Minister of Home Affairs in June 2020 to ask for clarification on the protocol for when foreigners' documentation is allegedly lost, but there has been no response at the time of writing this report.

During January 2020 documentation raids in Diepsloot, a township in Johannesburg, Robert, a non-national whose documents were expired, was returned to Diepsloot police station with approximately twenty other men after their initial hearings instead of being sent to Lindela Repatriation Centre. Fortune, Robert's foreign neighbor, said Robert and the other men were returned to the police station because money was missing from their personal possessions and without it, they could not be transferred to Lindela. Robert told Fortune that they did not register a complaint for fear of retaliation because police officers had already beaten some of them.¹⁶⁴ Fortune went to the station to help Robert, but police officers refused to answer questions telling him this was a Department of Home Affairs issue, and refused to allow Fortune to give Robert any food.¹⁶⁵ Fortune learned the men were given only one slice of bread per day and had their medications taken away from them.¹⁶⁶ Robert was finally released after 26 days with no explanation as to the legal grounds for holding him so long.¹⁶⁷ Human Rights Watch wrote to the Minister of Police in June 2020 asking if there have been any investigations into this situation, but there has been no response at the time of writing this report.

In contrast, Human Rights Watch research suggests that suspects arrested in connection with committing xenophobic violence were often released within a few days without thorough, effective investigations or follow up. After xenophobic incidents, South African government and law enforcement officials issued statements that they would stamp out lawlessness by arresting criminals. For instance, throughout the September 2019 violence, officials' daily statements focused on the numbers of arrests made. Almost 700 were arrested throughout Gauteng on charges ranging from "public violence, arson, malicious damage to property, theft and possession of stolen property, possession of unlicensed firearms and ammunition, attempted murder and murder, business robbery, and ongoing contravention of the Gathering Act."¹⁶⁸ Victims of xenophobic violence who spoke to

¹⁶³ Ibid.

¹⁶⁴ Human Rights Watch interview with Fortune on February 12, 2020.

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

¹⁶⁷ Human Rights Watch interview with Fortune on February 28, 2020.

¹⁶⁸ "Gauteng xenophobic violence: 10 of 12 victims were South Africans – defence minister," *News24*, September 10, 2019, <https://www.news24.com/SouthAfrica/News/gauteng-xenophobic-violence-10-of-12-victims-were-south-africans-defence-minister-20190910> (accessed December 5, 2019).

Human Rights Watch said they were not aware if their attackers were prosecuted or convicted. They said there has been no justice and they remain fearful that such impunity will embolden others. Human Rights Watch wrote to the Minister of Justice and Correctional Services in June 2020 requesting information on the number of investigations and prosecutions made for xenophobic violence, but there has been no response at the time of writing this report.

Challenges to rebuilding a life after being attacked for being a foreigner

In Durban, Human Rights Watch spoke to John Matabishi Kasese, 29, who recounted his struggle for justice following targeted xenophobic violence against him and other non-nationals.¹⁶⁹

A national of the Democratic Republic of Congo, Kasese sought asylum in South Africa in 2014. He aspired to attend university, but first had to support himself financially so his cousin taught him to cut hair. By 2018, Kasese earned enough money to buy a salon and start saving for his studies. However, his dreams came to a halt on March 31, 2019.

Early that morning, approximately 30 South Africans forcibly entered his home in Umlazi township's Philani Y Section in KwaZulu-Natal. They took his and his brother's phone, demanded their passwords, and scrolled through their photographs, claiming they were looking for evidence that they were responsible for the recent killing of a South African. Kasese told them that they did not know anything about the incident and that just because they were non-nationals did not mean they knew every foreigner in the area, or even those from the same country. A few of the attackers beat the brothers, while others turned their room upside down, taking their belongings, saying they were looking for evidence to connect them to the murder. According to Kasese, the South Africans found a shirt, red in the front and black in the back, and argued as to whether it could be the shirt the alleged killer had been wearing.

The attackers slapped, kicked, and punched Kasese and his brother to force them out of their home and into a Toyota van waiting outside. The attackers continuously threatened and beat them as they drove around the township in a caravan of 15-20 cars, demanding to be taken to other foreigners' homes and businesses while singing about killing all foreigners. Kasese said some of their assailants wore police uniforms and drove nice cars, such as Hondas, Toyotas, and Volkswagens.

¹⁶⁹ Human Rights Watch interview with John Matabishi Kasese on November 18, 2019 in Durban.

Kasese estimates that by 8:30 a.m., over 100 people – presumably, all South Africans – joined the caravan. They then arrived at a salon where one of Kasese’s friends was working. This friend was beaten and placed in the trunk of a car in the caravan. At the same time, another of Kasese’s brothers attempted to escape from a separate mob by taxi only to have the taxi driver call the mob saying that he had a foreigner for them. He was then beaten and placed in a different car in the caravan.

In total, the mob abducted six non-nationals, including Kasese and his two brothers, and took them to a car wash in the township, where approximately 50 South Africans beat them while chanting death threats. The mob warned that one of the six would be beaten to death while the other five would be cut into pieces and burned. One of the non-nationals was then forced into a car’s trunk and driven away. Kasese said that in addition to being terrified, he was worried that his parents would never know what happened to him and his brothers.

Around 11:00 a.m., a Combi police car arrived with a non-uniformed police officer who asked the mob, “who had killed our brother?” They pointed at the non-nationals and said, “these guys.” The police officer then asked why they had not yet been killed and said he was going to shoot each foreigner from their feet and up their body to their head. Kasese said the officer then left the scene, saying that he would return with his gun.

They then waited for hours during which the mob forced Kasese and the four others to smell petrol as they questioned them, insinuating that they would be burned for “hiding information.” One of the mob, a woman, left and returned with another 10 liters of petrol, after declaring that what they had would not be enough. The group drank vodka and smoked marijuana, telling their foreign victims, “We will take our conscience off and we will kill you.” Kasese and the others confirmed with each other that they did not know any information and proceeded to simultaneously cry and pray for their lives.

But before the petrol was poured on them and before the non-uniformed officer returned with his gun, two uniformed police officers arrived in the afternoon and demanded that the mob open the gates. The officers asked what they were doing and demanded that the non-nationals be released. The police officers then led Kasese and the four others away from the crowd and into their vehicles, but did not arrest any of the group who had abducted and abused them, or even take names to issue warnings to them.

The men arrived at Bhekithemba police station at approximately 5:00 p.m. and gave statements to the officers, who believed that they were not the wanted murder suspects. Kasese told the officers about their sixth friend who was placed in a trunk and asked the police officers to retrieve their phones, but they were never recovered. Despite bleeding and being bruised, Kasese said he was so happy to be alive that it did not occur to him to go to the hospital. Because the police acknowledged that it was neither safe nor possible for the men to return to their homes, the police called the South African Social Security Agency (SASSA) and Refugee Social Services to become involved. Caseworkers were assigned to the case and placed them in Haven of Hope shelter in Durban Central Business District.

The sixth non-national was found on the side of the road, left for dead. According to Kasese, members of a Congolese community organization in South Africa retrieved this man and took him to King Edward VIII hospital. Kasese said that the man told him that during his treatments, the hospital staff asked him why he was in the country because he was not wanted there.

Kasese and the other non-nationals returned to the police station the following day on April 1, 2019 to provide more detailed statements and open an investigation. He asked the police how they can be safe if they were targeted and taken from their homes and businesses. According to Kasese, a high-ranking police officer was there and insisted that the previous day's attacks were solely criminal, not xenophobic. Kasese requested that the ward councillor, who serves as a liaison between the municipality and the community, attend the meetings with them, but she said she was sick and would not be able to attend. The police held meetings in Philani Y Section, but Kasese and the others refused to attend for fear of being abducted again. Also, by April 2, mobs had attacked other foreigners in



The aftermath of looting and destruction of a foreign-run hair salon in Durban targeted by xenophobic mobs in April 2019. © 2019 Private



A Community Chat container, frequented by non-South African nationals to gather and make affordable calls in townships, was broken into and looted by a mob during a wave of xenophobic violence in Durban in April 2019. © 2019 Private

Philani in retaliation for the same murder, displacing 53 foreigners and forcing them to take refuge in local shelters.¹⁷⁰

Local Durban and Umlazi authorities also arranged a meeting in Philani with the locals who abducted and beat them, but Kasese and the others refused to leave the car without a police escort, which never arrived.¹⁷¹ When the authorities asked the locals why they attacked the non-nationals, according to Kasese, the locals said it was to provoke government attention, specifically the ward councillor's attention, since they felt only attacks on foreigners would bring authorities to their township.

After the township meeting, no further action was taken to retrieve any belongings from Philani Y Section or protect them despite further encounters with individuals from the mob that abducted and beat them. One South African man even took their pictures while they were in public and posted them on social media. Kasese said he still receives messages

¹⁷⁰ "South Africa: Attacks on Foreign Nationals," Human Rights Watch, April 15, 2019, <https://www.hrw.org/news/2019/04/15/south-africa-attacks-foreign-nationals#>.

¹⁷¹ Human Rights Watch interview with John Matabishi Kasese on November 18, 2019 in Durban.

and calls from private numbers threatening to cut him and becomes anxious from even a friendly tap on the back. In May and November 2019, some of the non-nationals were again abducted, beaten, and threatened by armed South African men who demanded to know the location of the other non-nationals.

Kasese said they all stayed at the shelter for one month until its resources were exhausted. SASSA provided them with vouchers for a nearby supermarket, but the vouchers cannot be redeemed without South African identity documents, which are issued only to citizens or permanent residence permit holders.¹⁷² Unable to use them, Kasese relied on donations from local migrant community groups. He received a few thousand Rand from UNHCR as well and visited salons throughout Durban asking for work. When Kasese asked his caseworker to find solutions with UNHCR, the staff told him, “Who do you think you are? We are dealing with people from back in 2008 still.”

Kasese was told by people in Umlazi that the alleged killer was in fact a local but that a foreigner, who had intervened to deescalate the situation between the murderer and his victim, was wrongly blamed for the murder. However, Kasese has no means of verifying this account, as police have not conducted an effective investigation into the murder or into his cases, the most recent of which he opened with a detective in Durban on July 12, 2019. He said as of August 2020, no progress has been made on this case.

After six years of hard work in South Africa, Kasese is living with his cousin’s family in Durban with only a few hundred Rand saved. Devastated, Kasese said, “I was saving [money] for studies because my dream is to become someone. When this all happened, all my dreams failed. It’s like I don’t have a dream. It’s worse because I have to restart again. People do not help non-newcomers.”

Documentation Issues: Acquisition and Renewal of Documents

The difficult process of obtaining permits and identification documents from the Department of Home Affairs to maintain legal status to stay in the country has been previously documented by Human Rights Watch and was mentioned by all victims of xenophobia interviewed for this report.¹⁷³ Due to changes and misinformation regarding the Department of Home Affairs’ policies as well as inconsistencies in their application,

¹⁷² South Africa Department of Home Affairs, “Identity Documents,” n.d., <http://www.dha.gov.za/index.php/civic-services/identity-documents> (accessed September 8, 2020).

¹⁷³ See “Living on the Margins: Inadequate Protection for Refugees and Asylum Seekers in Johannesburg,” Human Rights Watch, November 16, 2005, <https://www.hrw.org/report/2005/11/16/living-margins/inadequate-protection-refugees-and-asylum-seekers-johannesburg>; “No Healing Here: Violence, Discrimination and Barriers to Health for Migrants in South

acquiring documentation is a challenge for non-nationals. Many foreigners said they found it difficult to find accurate information about their options and to stay informed of policy changes.

Jean arrived from the Democratic Republic of Congo in 2003 as a refugee but is now a permanent resident.¹⁷⁴ He married a Congolese asylum seeker in South Africa in 2007 and she was granted refugee status. Department of Home Affairs told him that his wife could also become a permanent resident after five years of marriage. However, when she attempted to apply for permanent residency after five years of marriage, according to Jean, a Department of Home Affairs worker told them that there had been a change in policy, and it was no longer possible for her to receive permanent residence status through her husband. Neither he nor Human Rights Watch was able to confirm such a change in their official policy on permanent residency.¹⁷⁵

The issuance of birth certificates for children of non-nationals born in South Africa has also been inconsistent and unpredictable. By law, since March 2013, all babies born in South Africa should be issued with “unabridged” birth certificates, which can be used to access basic services such as education and healthcare.¹⁷⁶ Prior to this, newborn babies were issued “abridged” birth certificates. According to the Department of Home Affairs, because unabridged birth certificates include details such as both parents’ full names, countries of birth, and date of births, they are “more secure and reliable” and ensure “all people in the country are and feel safe.”¹⁷⁷

Africa,” Human Rights Watch, December 7, 2009, <https://www.hrw.org/report/2009/12/07/no-healing-here/violence-discrimination-and-barriers-health-migrants-south-africa>.

¹⁷⁴ Human Rights Watch interview with Jean on November 14, 2019 in Johannesburg.

¹⁷⁵ South Africa Department of Home Affairs, “Documents required: Spouse married for a minimum of five years,” n.d., <http://www.dha.gov.za/index.php/immigration-services/permanent-residency/10-immigration-services/969-documents-required-spouse-married-for-a-minimum-of-five-years> (accessed September 8, 2020).

¹⁷⁶ South Africa Department of Home Affairs, “Minister Pandor issued unabridged birth certificates , 4 March 2013,” March 4, 2013, <https://www.gov.za/services/minister-pandor-issued-unabridged-birth-certificates-4-march-2013> (Accessed September 8, 2020).

¹⁷⁷ South Africa Department of Home Affairs, “Home Affairs encourages parents to get unabridged birth certificates for children,” June 12, 2014, <http://www.dha.gov.za/index.php/statements-speeches/475-home-affairs-encourages-parents-to-get-unabridged-birth-certificates-for-children> (accessed September 8, 2020).

In the case *Centre for Child Law and Others v. Minister of Basic Education and Others*, decided by the High Court of South Africa in December 2019, on behalf of 37 children without birth certificates who were barred from enrolling in Eastern Cape schools, it was revealed that many children born in South Africa, whether to citizens or foreigners, had not received unabridged birth certificates.¹⁷⁸ During litigation, the Department of Basic Education stated that there were 998,433 “undocumented” children enrolled in public schools, meaning that they could not identify themselves by means of, *inter alia*, passports, identity documents, birth certificates, or permits. Of those, 880,968 were South African citizens.¹⁷⁹ Reasons given for children being undocumented included that one parent was undocumented; that if only the father was South African, he could not register the child because of the Births and Deaths Registration Act; the Births and Deaths Registration Act’s “proof of birth” was not met; and orphaned children’s caregivers were not able to provide the necessary documentation.¹⁸⁰ This became an issue on March 17, 2016 when the Acting Superintendent-General of the Eastern Cape Provincial Government issued a circular requiring students to have an identity or passport number. Ruling on December 19, 2019 the Court ordered Eastern Cape public schools to accept alternative proof of identity for the 37 undocumented children and declared that the Immigration Act 13 of 2002 did not “prohibit the admission of illegal foreign children into schools.” Moreover, the Minister of Education was prohibited from removing or excluding already-admitted students solely because they lacked or could not produce specific identification documents.¹⁸¹

Five of Jean’s six children were born in South Africa between 2008 and 2018.¹⁸² He had his first South African-born child, a daughter, in 2008 while his family was living in a temporary camp in Johannesburg after fleeing xenophobic violence. Her abridged birth certificate states that she is an “alien.” After Jean acquired permanent residency status,

¹⁷⁸ *Centre for Child Law and Others v. Minister of Basic Education and Others*, 2020 (3) SA 141 (ECG) (12 December 2019), <http://www.saflii.org/za/cases/ZAECGHC/2019/126.html> (accessed July 16, 2020).

¹⁷⁹ “Court to consider legality of excluding children without birth certificates from school,” *IOL*, September 16, 2019, <https://www.iol.co.za/pretoria-news/court-to-consider-legality-of-excluding-children-without-birth-certificates-from-school-33110706> (accessed July 16, 2020).

¹⁸⁰ *Centre for Child Law and Others v. Minister of Basic Education and Others*, 2020 (3) SA 141 (ECG) (12 December 2019), <http://www.saflii.org/za/cases/ZAECGHC/2019/126.html> (accessed September 8, 2020).

¹⁸¹ *Ibid.*

¹⁸² Human Rights Watch interview with Jean on November 14, 2019 in Johannesburg.

his next two children were given unabridged birth certificates and permanent residency status. Then, he said, a Department of Home Affairs worker told him that the permanent residency policy changed so that his future South-African born children were no longer automatically granted permanent residency because he had it.¹⁸³ As a result his last two children born in South Africa, with the youngest born in 2018, have unabridged birth certificates that state they are “aliens.”

Jean said that having the word “alien” on three of his children’s birth certificates reminds him that his family is not welcome in South Africa despite living here since 2003. His children who are labeled “alien” have been given warnings from their public schools to acquire birth certificates or another identity document without the word “alien” to continue their enrollment. However, according to Jean, the Department of Home Affairs told him that there were no alternative forms of documentation for his children. The school staff also told his children that the school was doing them a favor by allowing them to learn despite being “aliens,” which has emboldened other students to bully his children and call them “*kwerekwere*.” He elaborated, “My children cannot go to school [without being beaten], so they say they do not belong to this place and it affects me a lot that my children are so affected.”¹⁸⁴

Mwenebanga and Rehema’s children were all born in South Africa and issued unabridged birth certificates.¹⁸⁵ Fortunately, schools in their area accepted them for enrollment last year, but the schools informed them that they would require Section 22 permits proving their eligibility to study in South Africa to continue enrollment next year. Mwenebanga applied for Section 22 permits for his children in October 2018, but as of August 2020 they had yet to be issued. When he went to try to check their status, Mwenebanga said, “Home Affairs kept sending us to different Home Affairs sections, which kept sending us to different departments and no one acted.”¹⁸⁶

Activists told Human Rights Watch that the Department of Home Affairs needs more capacity to address the backlog of new cases, appeals, and renewals.¹⁸⁷ As of November 2019, the next available appointment to acquire documentation was in June 2020 and 150,000 asylum seekers had pending appeal decisions, thus forcing non-nationals to

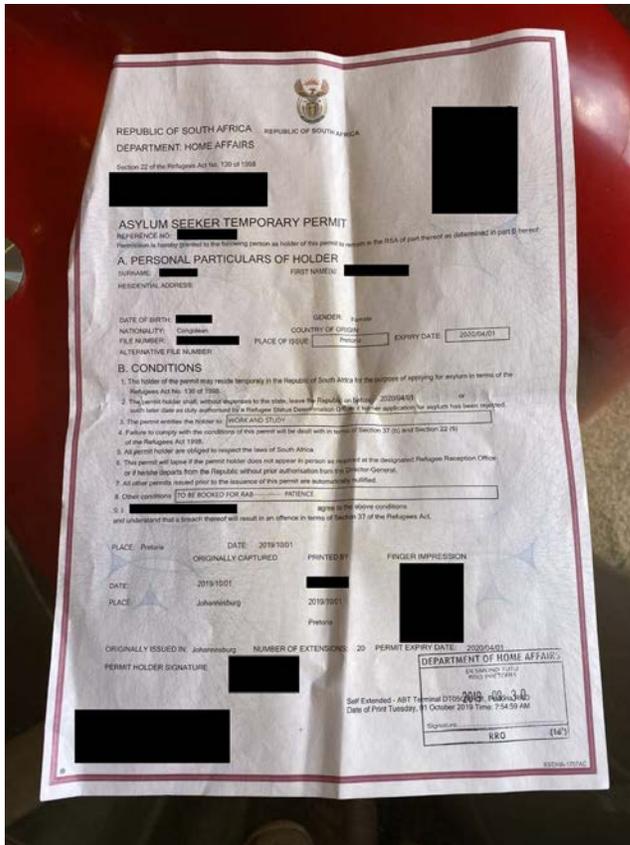
¹⁸³ Ibid.

¹⁸⁴ Human Rights Watch interview with Jean on November 14, 2019 in Johannesburg.

¹⁸⁵ Human Rights Watch interview with Mwenebanga on November 14, 2019 in Johannesburg.

¹⁸⁶ Ibid.

¹⁸⁷ Human Rights Watch interview with Vusumuzi Sibanda on November 13, 2019 in Johannesburg.



Photograph of an asylum seeker temporary permit that has been renewed for 20 extensions covering 12 years. © 2019 Kristi Ueda

remain undocumented for months.¹⁸⁸ A major strain is that the government closed the Cape Town Refugee Reception Office in July 2012, which means asylum seekers and refugees now have to travel to the office in Pretoria to acquire and renew their documentation.¹⁸⁹ The Supreme Court of Appeal ordered the Department of Home Affairs to reopen the Cape Town office by March 31, 2018, but the Department has not yet done so, leaving refugee-status-seeking foreigners' lives on hold.¹⁹⁰

For those who have been able to acquire immigration documents, the next challenge lies in renewals. Rehema has to renew her asylum-seeker permit every six months at the Department of Home Affairs

office in Pretoria.¹⁹¹ She said that she must be there by 5:00 a.m. to ensure she is near the front of the long line of others also seeking renewal. Sometimes she has waited all day only to be told to return on a different day because of technical problems. She has renewed her Section 22 asylum seeker permit over 20 times since her arrival in South Africa in 2007. She would like if she could be on the same refugee file as her husband, Mwenebanga, and they could be treated as a family. As Mwenebanga has refugee status, he only has to renew his documents every four years, which would be more convenient for the family if they were on the same file. They have tried to merge their files several times but were rejected. Maintaining the necessary paperwork to merge their files and finding the time to spend a day at the Home Affairs office has proven to be very difficult for them

¹⁸⁸ Human Rights Watch interview with UNHCR Pretoria staff on November 25, 2019.

¹⁸⁹ Refugee Reception Offices are run by the Department of Home Affairs. It is at these offices where asylum seekers apply for asylum or refugee status and acquire and renew documents.

¹⁹⁰ "Reopening of CT Refugee Reception Office Delayed Again," Eyewitness News, February 3, 2020, <https://ewn.co.za/2020/02/03/reopening-of-ct-refugee-reception-office-delayed-again> (accessed April 24, 2020).

¹⁹¹ Human Rights Watch interview with Rehema on November 21, 2019 in Johannesburg.

as parents of children all under the age of twelve, so they have temporarily decided to stop trying. Rehema said that she still carries her asylum permit at all times to show to police, but it is not useful in other places like banks, where she has had her permit scoffed at and rejected.¹⁹²

Negasi has been in South Africa for 17 years. To renew his Section 22 asylum seeker permit, he sleeps outside of the Department of Home Affairs office in Pretoria to be in line at 6:00 a.m. but still waits all day. Negasi also revealed that his status appears fraudulent because of an administrative error that created two files under his name. Frustrated, he said, “I do not have a life. I cannot do anything. They have robbed me of my life.”¹⁹³

With little to no access to justice or to acquiring long-term legal status, the future remains uncertain.

¹⁹² Ibid.

¹⁹³ Human Rights Watch interview with Negasi on November 21, 2019 in Johannesburg.

Role of the National Action Plan

When the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance (NAP) was launched in March 2019, it was released with a five year implementation plan. Not all of the actions and objectives included timeframes, but of those that did, the following were listed to begin within the first year of its launch: having baseline study on the levels of racism, racial discrimination, xenophobia, and related intolerance; creating an effective governance structure to provide oversight on the NAP's implementation; securing funding for the NAP's implementation; developing data collection of disaggregated statistical data for the measurement for racism, racial discrimination, xenophobia, and related intolerance; and engaging key stakeholders on key responsibilities and initiatives that will promote the NAP's implementation.

As this report documents, South Africa experienced concerning waves and incidents of xenophobic violence in the first year of the NAP's existence that are at odds with its overarching goals. Even if the implementation plan has yet to develop a timeframe on actions and objectives that directly address and combat xenophobia, South African government and law enforcement authorities should attempt to advance them, or at the very least ensure to not act contrary to the NAP's purpose. For instance, they could hold public engagements on xenophobia and denounce scapegoating and stereotyping of foreigners to promote social cohesion within South African society. Authorities could also prioritize protecting foreigners and ending impunity for perpetrators of xenophobic violence to combat discrimination based on ethnic origin and ensure the human rights of foreigners are promoted and respected.

If xenophobic violence and other incidents continue to occur at such an alarming rate and government and law enforcement authorities continue to be indifferent and unresponsive, the NAP will fail. The NAP's remaining actions and objectives should be urgently and efficiently implemented to facilitate its success so that non-nationals can live in accordance with the human rights guaranteed to them.

Legal Standards

International Legal Standards

One of the enumerated purposes of the NAP is to assist South Africa in meeting its international and regional treaty obligations. International human rights law requires that all states respect and protect the rights of all those within their jurisdiction, not just citizens. Whereas there is some discretion to distinguish between citizens and non-citizens in the exercise of some rights such as voting, the fundamental principles of equality and non-discrimination prohibit discrimination based on grounds that include race, national origin and ethnicity.

Section 232 of South Africa's Constitution recognizes the Universal Declaration of Human Rights as "law in the Republic unless...inconsistent with the Constitution or an Act of Parliament."¹⁹⁴ South Africa is also a party to the African Charter on Human and People's Rights (ACHPR) the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).¹⁹⁵

Articles 2 of the ICCPR, ICESCR, and ACHPR respectively provide that states party to the treaties should guarantee all persons the enumerated rights and freedoms in each instrument without distinction for any reason of "race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."¹⁹⁶ The ACHPR also explicitly includes the categories of ethnic group and fortune.¹⁹⁷

Article 1 of ICERD defines "racial discrimination" as "any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the

¹⁹⁴ Constitution of the Republic of South Africa, entered into force February 4, 1997, section 232.

¹⁹⁵ African [Banjul] Charter on Human and Peoples' Rights (ACHPR), adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, ratified by South Africa on July 9, 1996; International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by South Africa on December 10, 1998; International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S.3, entered into force January 3, 1976, ratified by South Africa on January 12, 2015; International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 660 U.N.T.S. 195, entered into force January 4, 1969, ratified by South Africa on December 10, 1998.

¹⁹⁶ UDHR, art. 2; ICCPR, art. 2; ICESCR, art. 2; ACHPR, art. 2.

¹⁹⁷ ACHPR, art. 2.

purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”¹⁹⁸ Racial discrimination, does not only include intentional direct discrimination, but also acts or omissions whose effects impose an unjustified, disproportionate burden on non-nationals. When policies and practices lead to such indirect discrimination, state parties are required to change them to eliminate the discriminatory impact.

Article 2 of ICERD requires governments to pursue by all appropriate means and without delay measures to eliminate racial discrimination.¹⁹⁹ State parties must ensure that “all public authorities and public institutions, national and local, ...act in conformity with this obligation.” Specifically, state parties are required to “review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination.” The same article, requires state parties to “discourage anything which tends to strengthen racial division.”²⁰⁰

In its General Recommendation No. 30 on discrimination against non-citizens, the Committee on the Elimination of Racial Discrimination (CERD Committee), the body of independent experts that monitors implementation of the ICERD by its state parties, reminds states at the outset that they are under an obligation to guarantee equality between citizens and non-citizens in the enjoyment of civil, political, economic, social, and cultural rights to the extent recognized under international law.²⁰¹ The CERD Committee calls on state parties, like South Africa, to:

- Take steps to address xenophobic attitudes and behaviour towards non-citizens, in particular hate speech and racial violence (para 11);
- Take resolute action to counter any tendency to target, stigmatize, stereotype, or profile, on the basis of race, colour, descent, and national or ethnic origin, members of “non-citizen” population groups, especially by politicians, officials, educators and the media, on the Internet and other electronic communications networks and in society at large (para 12);

¹⁹⁸ ICERD, art. 1.

¹⁹⁹ ICERD, art. 2.

²⁰⁰ *Ibid.*

²⁰¹ UN Human Rights Committee, General Recommendation XXX on Discrimination against non-citizens, (Sixty-fifth session) (2005), para. 3, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=6&DocTypeID=11 (accessed August 11, 2020).

- Take action against racially motivated violence and to ensure the access of victims to effective legal remedies and the right to seek just and adequate reparation for any damage suffered as a result of such violence (para 18);
- Combat ill-treatment of and discrimination against non-citizens by police and other law enforcement agencies and civil servants by strictly applying relevant legislation and regulations providing for sanctions and by ensuring that all officials dealing with non-citizens receive special training, including training in human rights (para 21);
- Ensure that claims of racial discrimination brought by non-citizens are investigated thoroughly and that claims made against officials, notably those concerning discriminatory or racist behaviour, are subject to independent and effective scrutiny (para 23);
- Remove obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens, notably in the areas of education, housing, employment and health (para 29);
- Ensure that public educational institutions are open to non-citizens and children of undocumented immigrants residing in the territory of a State party (para 30).

In 2016 the CERD Committee, noting the waves of xenophobic violence in 2008 and 2015, called on South Africa to “take action to prosecute perpetrators of racial discrimination and xenophobia; provide further information on the prosecution of cases of violence against foreign nationals, in dedicated courts or other courts; provide statistical data on the number of cases reported and the number of perpetrators who have been prosecuted and convicted; establish further dialogue within communities in conflict to address root causes of discrimination and violence; and conduct public education campaigns to end racism and xenophobia.”²⁰²

Article 7 of the UDHR, Article 26 of the ICCPR, and Article 3(2) of the ACHPR guarantee equal protection for all persons before the law and Article 8 of the UDHR and Article 9 of the ICCPR guarantee a right to effective remedy.²⁰³ The 1951 Convention Relating to the Status of Refugees, to which South Africa is a party, grants asylum seekers and refugees free access to the courts of law and “the same treatment as a national in matters pertaining to access to the courts, including legal assistance” in Article 16.²⁰⁴

²⁰² Concluding observations on the combined fourth to eighth periodic reports of South Africa, CERD/C/ZAF/CO/4-8, October 5, 2016, para. 28.

²⁰³ UDHR, art. 7 and 8; ICCPR, art. 9 and 26, ACHPR, art. 3(2).

²⁰⁴ Convention relating to the Status of Refugees, 189 U.N.T.S. 150, entered into force April 22, 1954, acceded by South Africa on January 12, 1996, art. 16.

All children, including non-nationals, are specifically protected under the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC).²⁰⁵ According to article 2(2) of the CRC, “state parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.”²⁰⁶ Article 7(1) of the CRC and Article 6 of the ACRWC states that every child must be registered immediately after birth and have the right to acquire a nationality.²⁰⁷

Children also have a right to education as stated in Article 28 of the CRC and Article 11 of the ACRWC.²⁰⁸ In its concluding observations and recommendations to South Africa in March 2019, the African Committee on the Rights and Welfare of the Child (ACERWC) urged the government to take all necessary measures to ensure that children from marginalized groups are not discriminated against.²⁰⁹ In particular, ACERWC called upon the government to avoid unnecessary barriers to accessing, among other things, education, healthcare, and birth registration services. In this respect, ACERWC recommended removing barriers such as the requirement of documentation for asylum seekers, migrants, refugees, and stateless children.²¹⁰

Domestic Legal Standards

South Africa’s Constitution proudly proclaims that it was founded on the values of human dignity and non-racialism, and states in its preamble that, “South Africa belongs to all who live in it, united in our diversity.”²¹¹

²⁰⁵ Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, ratified by South Africa on June 16, 1995; African Charter on the Rights and Welfare of the Child (ACRWC), OAU Doc. CAB/LEG/24.9/49 (1990), entered into force November 29, 1999.

²⁰⁶ CRC, art. 2(2).

²⁰⁷ Ibid, art. 7(1); ACRWC, art. 3.

²⁰⁸ CRC, art. 28; ACRWC, art. 11.

²⁰⁹ African Committee of Experts on the Rights and Welfare of the Child, “Concluding observations and recommendations of the African Committee of Experts on the Rights and Welfare of the Child to the Government of the Republic of South Africa on its first periodic report on the implementation of the African Charter on the Rights and Welfare of the Child,” March 2019, <https://acerwc.africa/wp-content/uploads/2019/07/Concluding%20observation%20for%20South%20African%20Periodic%20State%20Party%20Report.pdf> (accessed July 17, 2020).

²¹⁰ Ibid.

²¹¹ Constitution of the Republic of South Africa, entered into force February 4, 1997, preamble and section 1.

The Constitution in section 7(2), provides that the Bill of Rights must be respected, protected, promoted, and fulfilled and, in section 8(1), that it “applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.”²¹² The Bill of Rights applies to both citizens and non-citizens equally with exceptions for political rights in section 19, the right to citizenship in section 20, the right to enter the country in section 21(3), the right to obtain a passport in section 21(4), and the right to choose their trade, occupation, or profession in section 22.²¹³ Bill of Rights section 9(3) elaborates that the “state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.”²¹⁴ Section 9(4) states that such discrimination cannot be committed by any person and “national legislation must be enacted to prevent or prohibit unfair discrimination.”²¹⁵

Bill of Rights section 12(1) states that everyone has the right to freedom and security of the person, which includes the right “to be free from all forms of violence from either public or private sources,” “not to be tortured,” and “not to be treated or punished in a cruel, inhuman or degrading way.”²¹⁶ Fulfilling the obligations in these sections requires all levels of the government to protect individuals from xenophobic violence, one element of which is the effective investigation of threats and viral warnings of violence to prevent them from materializing.

In addition, socio-economic rights in the Bill of Rights apply to everyone, not just citizens. These include the right to have access to adequate housing in section 24, healthcare services in section 27(1)(a), food and water in section 27(1)(b), and social security in section 27(1)(c).²¹⁷ Section 29 guarantees the right to education and section 30 guarantees the right to use the language and culture of one’s choice.²¹⁸ This means that foreigners’ children cannot be arbitrarily barred from school enrollment and foreigners should not be threatened or attacked when speaking their native languages.

²¹² Ibid, section 7(2) and 8(1).

²¹³ Ibid, section 19, 20, 21(3), 21(4), and 22.

²¹⁴ Ibid, section 9(3).

²¹⁵ Ibid, section 9(4).

²¹⁶ Ibid, section 12(1).

²¹⁷ Ibid, section 24, 27(1)(a), 27(1)(b), 27(1)(c).

²¹⁸ Ibid, section 29 and 30.

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“They Have Robbed Me of My Life”

Xenophobic Violence Against Non-Nationals in South Africa

Non-nationals in South Africa have continued to face xenophobic harassment and attacks, including by South African government officials and police, with little to no possibility of justice, despite the South African government’s unveiling of the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance on March 25, 2019. Many non-nationals, including asylum seekers and refugees, live in fear of xenophobic violence and discrimination, as thousands have been displaced and their shops and homes have been torched, looted, and destroyed.

“*They Have Robbed Me of My Life*” documents such incidents between March 2019 and March 2020. The report found that beyond the violence experienced by non-nationals, they also faced various forms of discrimination, including barriers to basic services and legal representation and lack of police protection. They also often face difficulties in acquiring and renewing immigration-related documents to maintain legal status and to access services including education and healthcare. Human Rights Watch urges the South African government to increase the urgency and effectiveness with which it responds to violence and discrimination against non-nationals, crucially by holding perpetrators of xenophobic harassment and attacks accountable to deter further incidents. The report calls on President Cyril Ramaphosa to fully implement the National Action Plan, including by urgently articulating actionable items and short term objectives that reflect contemporary discrimination and inequalities, not just in terms of apartheid-era categories of black, white, coloured, and Indian. Xenophobia should be acknowledged to manifest not only as violence, but also as discrimination and barriers in accessing employment, education, healthcare, and housing.

(above) Scorched and partially destroyed shop in Johannesburg’s Malvern suburb on September 9, 2019.

(front cover) A resident of Johannesburg’s Katlehong township runs while smoke arises from the shackles on September 5, 2019 as South Africa’s financial capital is hit by a new wave of anti-foreigner violence.

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