

A Legal and Socio-cultural Analysis of the Relationship Between Xenophobia and Taxation in South Africa*

Abstract

Xenophobia which refers to morbid hatred of foreigners is prevalent in South Africa, with the special manifestation of violent attacks on black Africans whenever there is any perception of a socio-political problem or infrastructural deficiency. The immigrants are blamed by the locals for relative prevalence of HIV/AIDS, unemployment, housing and electricity shortage and other issues. The article examines the effect of xenophobia on revenue collection in South Africa. It also discusses the adequacy of the legal protection offered immigrants, notwithstanding that they are legal or undocumented migrants, in South Africa, using the doctrinal method. The article found that the protection offered to the immigrants is deficient and that the inadequate provisions in the statutes made the black immigrants vulnerable to xenophobic attacks, which inadvertently affect the tax revenue collected by the state negatively. Further, the article found that the court has been consistently defended the rights of migrants in line with the South Africa Constitution, 1996. The article concludes with certain recommendations to prevent xenophobia, in a bid to enhance tax revenue collection in South Africa.

Keywords: Xenophobia, taxation, immigrants(foreigners), revenue, South Africa & Nigeria.

1 Introduction

In simple term, xenophobia, is the fear or hatred of foreigners or strangers. It is embodied in discriminatory attitudes and behaviour, and often culminates in violence, abuses of all types, and exhibitions of hatred.¹ Xenophobia may be limited to anti-immigration rules which unnecessarily limit immigrants' options and made them inaccessible to health care services or educational facilities.² Studies on xenophobia have attributed such hatred for foreigners to a number of causes like- the fear of loss of social status and identity, a threat, perceived or real, to citizens' economic success, a way of reassuring the national sovereignty and its boundaries in times of national crisis, a feeling of superiority and poor intercultural information.³ Xenophobia is also

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¹ Hussein Solomon and Hitomi Kosaka, 'Xenophobia in South Africa: Reflections, Narratives and Recommendations' (2019) 2(2) *Southern African Peace and Security Studies* 5-30.

² Arianne Shahvisi, 'Austerity or Xenophobia? The Causes and Costs of the "Hostile Environment"' (2019) 27 *NHS Health Care Analysis* 202-219; Woojin Lee, John Roemer & Karine Van der Straeten, 'Racism, Xenophobia, and Redistribution' (2006) 4(2-3) *Journal of the European Economic Association* 446-454.

³ M. Moge kwu, 'African Union: Xenophobia as Poor Intercultural Information', (2005) 26(1) *Ecquid Novi* 5-20; Sascha Riaz, 'Does Inequality Foster Xenophobia? Evidence from the German Refugee Crisis' (2023) 50(2) *Journal*

described as “new racism” or “cultural racism”, it must not be confused with racism; it differs from the latter of which, culture rather than race is the basis of exclusion.⁴ Though, xenophobia as a subcategory of racism, usually addresses much larger groups than the former,⁵ the term “xenophobia” is defined as, “a strong feeling of dislike or fear of people from other countries”.⁶ Xenophobia is also described as the fear of anything that is strange or foreign or the deep dislike of foreigners by nationals of a recipient state. In the definitions above, the words dislike, fear and hatred projects a negative attitude towards foreigners. It is not a natural response by native populations to the presence of foreigners, rather a socio-political phenomenon that contributes to the marginalisation of migrant groups in social and national settings. According to Crush the phenomenon is “crucially linked,” to aggressive nation-building and nationalism by the ultra or the radical right leaning ideologue.⁷ Racism refers to broadly ascribed characteristics, while xenophobia addresses more restricted qualities like language, religion, culture or similar aspects, often fused to an ethnicity. Akinola posited that xenophobia is “a systemic political, social and economic expression of imperialism” that may be aggravated by “deepening impoverishment” and “inter-state labour mobility”.⁸ Although economic competition aids the conflicts, but “nefarious activities of some foreigners” are no explanation because violations of the law belong as task to the criminal justice system of a state.⁹

Xenophobia appears as mutinous acts of nationalistic self-empowerment in excess of a punishment of offences and is characterised by its ignorance of questions of individual culpability and responsibility.¹⁰ Notably, foreigners’ conviction precedes any wrongdoing.¹¹ Xenophobia in South Africa is more than a fear or dislike of foreigners, it

of *Ethnic and Migration Studies*, 359–378; VOA News, ‘Violence Monitor: Xenophobic Attacks Stem from Frustration’ VOA (Washington, DC April 17, 2015) <https://www.voanews.com/a/xenophobic-attacks-stem-from-frustration-violence-monitor/2723955.html> accessed 29 July 2024.

⁴ J Crush and S. Ramachandran, *Xenophobia, International Migration and Human Settlement*. Human Development Research Paper 2009/47: United Nations Development Program. 2009.

⁵ A.O. Akinola, ‘Introduction: Understanding Xenophobia in Africa’ in Akinola AO (ed), *The Political Economy of Xenophobia*. (Cham: Springer Publishing, 2018).

⁶ Oxford Advanced Learners Dictionary: International student’s edition (7th ed. Oxford University Press, 2006).

⁷ J. Crush, ‘The Dark Side of Democracy: Migration, Xenophobia and Human Rights in South Africa’ (2000) 38(6) *International Migration* 103-133; J. Crush and S. Ramachandran, ‘Xenophobia, International Migration and Human Settlement’ Human Development Research Paper 2009/47: United Nations Development Program, 2009.

⁸ Akinola, ‘Introduction: Understanding Xenophobia in Africa’ in Akinola AO (ed), *The Political Economy of Xenophobia* (Springer Publishing, 2018).

⁹ Ibid, 4.

¹⁰ Ibid.

¹¹ Ibid.

is rather violent activity brought on by intense tension.¹² Valji laments that ‘patterns of xenophobic hostility thus constitute a violation of the human rights of a targeted and identifiable group that undermines the very values upon which this new democracy is premised’.¹³ Xenophobic sentiments are certainly not unique to South Africa, however, its distinctiveness emanates from the high levels of outrageous intolerance, the widespread hostility and violent outcome.¹⁴ Moreover, South African Xenophobic sentiments, attitudes and violence is directed mainly at fellow Africans usually of dark colour. Although it is seldomly directed at Asian, particularly Pakistanis in certain instances, which made some authors to termed it Afrophobia.¹⁵

South Africa is continually affected by extremely violent and widespread xenophobia,¹⁶ resulting in the death, maiming and destruction of the properties, livelihood and businesses of the predominantly black immigrants. The South African politicians, probably with the exception of Julius Malema and his political party- the Economic Freedom Fighters (EFF), used the foreigners as scapegoats - a cover for their corruption, maladministration and wrongdoings. Foreigners were blamed for unemployment, crime, spread of HIV/AIDS and any other conceivable problem in the south African society!¹⁷ Unfortunately, most of the older politicians such as Jacob Zuma, Thabo Mbeki, Mongosuthu Buthelezi and others had lived in exile as favoured refugees during the apartheid period.¹⁸ The refugee status of most of the current South African leaders was

¹² B. Harris ‘Xenophobia: A New Pathology for a New South Africa?’ In D. Hook and G. Eagle (eds), *Psychopathology and Social Prejudice*. (University of Cape Town Press, 2002), 169-184 @170.

¹³ N. Valji, *Creating the nation: The rise of violent xenophobia in the new South Africa*. (Unpublished Masters Thesis, York University, 2003) <http://www.csvr.org.za/docs/foreigners/riseofviolent.pdf> accessed 29 July 2024.

¹⁴ I. Palmay, ‘Refugees, Safety and Xenophobia in South African Cities: The Role of Local Government. Working Paper for the Centre for the Study of Violence and Reconciliation. Johannesburg: CSVr.; Harris (n 12) 169-184; Max Friedrich Steinhardt, *The Impact of Xenophobic Violence on the Integration of Immigrant* IZA DP No. 11781 IZA – (Institute of Labour Economics, 2018).

¹⁵ Moses E. Ochon, ‘The rise of Afrophobia in South Africa’ <https://blogs.lse.ac.uk/africaatlse/2021/03/03/black-south-african-intellectuals-went-from-pan-africanism-to-insular-afrophobia/>

[/?fbclid=IwAR0dFT3Q0U1uj0WwUD1G6Wk8Uf_EcpdVuKtRK8FTQ4XebXmMCVQLa1OfM](https://blogs.lse.ac.uk/africaatlse/2021/03/03/black-south-african-intellectuals-went-from-pan-africanism-to-insular-afrophobia/?fbclid=IwAR0dFT3Q0U1uj0WwUD1G6Wk8Uf_EcpdVuKtRK8FTQ4XebXmMCVQLa1OfM) accessed 29 July 2024; N.P. Dlamini, T.C. Adetiba, A.O. Enaifoghe and V.H. Mlambo, ‘Afrophobia and South Africa’s Image on the Continent: Implications for Inter-State Relations and Diplomacy’ (2020)17(3) *African Renaissance* 9; B. Oluphunda, ‘Why do South Africans Hate Nigerians?’ *The Punch* (Lagos, 20 June 2013) 3.

¹⁶ Sean Maliehe and Jürgen Schraten ‘The Roots of Xenophobia in 19th Century Imperialism (2022) 54(2) *Acta Academica* 69-94

¹⁷ Thabi Myeni, ‘S African minister suggests foreigners are to blame for no jobs’ Aljazeera (Doha, 16 June 2022) <https://www.aljazeera.com/news/2022/6/16/s-africa-minister-suggests-foreigners-to-blame-for-no-jobs> accessed 29 July 2024; Gareth Newham, ‘South Africa’s problems are not caused by foreigners’ (5 September 2019) <https://issafrica.org/iss-today/south-africa-problems-are-not-caused-by-foreigners>; Accord, It’s not just Xenophobia (March 29, 2011) <https://www.accord.org.za/publication/its-not-just-xenophobia/> accessed 29 July 2024.

¹⁸ Sapphire K. Peterside, Jide Ibietan, and Oluwatimilehin Deinde-Adedeji ‘Xenophobia and Migrants’ Irritants in Nigeria-South Africa Relations: A Discourse’ (2020) 8(4) *International Journal of Innovative Social Sciences & Humanities Research* 48-60; Awosusi, O. E. ‘A Critical Review of Nigeria’s Regional Hegemonic Aspirations Through Afro-Centric Engagements from 1999-2019: Call for a National Rethink’ (2020) 2(1) *Journal of Political*

acknowledged in the case of *Union of Refugee Women and Others v Director, Private Security Industry Regulatory Authority and Others*¹⁹ when Kondile, AJ stated in paragraph 30 of his judgement that

‘During the liberation struggle many of those who now find themselves among our country’s leaders were refugees themselves, forced to seek protection from neighbouring states and abroad’.

However, the response of Jacob Zuma, the erstwhile president of South Africa after the 2015 xenophobic attack is instructive

Our brother countries contribute to this. Why are their citizens not in their countries? It is not useful to criticize South Africa as if we mushroom these foreign nationals and then ill-treat them . . . Everybody criticizes South Africa as if we have manufactured the problem. Even if people who are xenophobic are a minority, but what prompts these refugees to be in South Africa? It is a matter we cannot shy away from discussing.²⁰

Some African countries suffered due to their support of the liberation struggle in South Africa. Nigeria for instance was classified as a frontline state for its stance in opposing apartheid such that Nigeria lost its most favoured nation status (MFN) with the United Kingdom due to the South African emancipation struggle.²¹ In 1978, the Nigerian government partially nationalized the British-owned Barclays Bank and the British Petroleum (BP) and renamed the latter African Petroleum (AP) in order to dissuade the British from recognizing the puppet regime in Rhodesia.²² Further, in a bid to cushion the pains of the endangered states in the continent, the Nigerian government in December, 1976, launched the Southern African Relief Fund to fund the liberation of Angola,

Science, Public and International Affairs 21; O. Abegunrin, Nigeria and the Struggle for the Liberation of South Africa. in O Abegunrin (ed), *Global Politics in the Twenty-First Century, Africa*. (Palgrave Macmillan, 2009).

¹⁹ (CCT 39/06) [2006] ZACC 23; 2007 (4) BCLR 339 (CC); (2007) 28 ILJ 537 (CC); 2007 (4) SA 395 (CC) (12 December 2006)

²⁰ Maromo, ‘African Nations to Blame for Influx: Zuma’ *Independent* (Pretoria, 27 April 2015) 1.

²¹ Victor Okoro Ukaogo, and others ‘Afro-centrism as the Centerpiece of Nigeria’s Foreign Policy: A Historical Misnomer in the Aftermath of Xenophobic Attacks in South Africa’ (2020) 7(1) *Cogent Arts & Humanities* 1-14 Aljazeera ‘Xenophobia in South Africa’ <https://Xenophobia%20in%20South%20Africa%20-%20Causes,%20attacks%20and%20history.htm> accessed 29 July 2024; Elemanya A Vincent, Xenophobic Attacks on Nigerians in South Africa: Causes and Implications (2022) 9(12) *International Journal of Multidisciplinary Research and Development* 84-88; Belinda Dodson, ‘Locating Xenophobia: Debate, Discourse, and Everyday Experience in Cape Town, South Africa’ (2010) 56(3) *Africa Today* 2-22.

²² Ibid; P.F. Wilmot, *Apartheid and African Liberation* (University of Ife Press Limited, 1980); I.S. Zabadi, ‘Nigeria’s New Multilateral Diplomacy’ in Bola A. Akinterinwa (ed), *Nigeria’s New Foreign Policy Thrust: Essays in Honour of Ambassador Oluysteri Adeniji* (Vantage Publishers Limited, 2004) 343-358; I.S. Zabadi and F.C. Onuoha, ‘Nigeria and South Africa: Competition or Cooperation’ in Thomas A. Imobighe and Warisu O. Alli (eds), *Perspectives on Nigeria’s National Politics and External Relations: Essays in Honour of Professor A. Bolaji Akinyemi*, (University Press PLC, 2012) 384-408.

Namibia and South Africa,²³ however it seems as if South Africans, including their elites has forgotten the sacrifice of these African countries.

It is instructive to state at this juncture that the legal foundation for xenophobia may have been laid in the South African Constitution of 1996, which, in the preamble promises that “South Africa belongs to all who live in it”, but limits the protection of the law to only “every citizen”. Section 1 of the Constitution also grants an unconditional “human dignity”, but section 3 restricts it to citizens.²⁴ In practical policy terms, xenophobia undermines social cohesion, peaceful co-existence, good governance and human rights observance.²⁵ While it is undisputable that unrestricted immigration may be harmful on any nation, it is noteworthy to state that xenophobic attacks, which made no demarcation between legal and undocumented immigrants, have a negative effect on the economy of South Africa. It is in the light of this that this treatise examines the legal and socio-cultural impact of xenophobia on taxation in South Africa.

2 Literature Review

Intolerance, bullying and xenophobic attacks against foreigners of African descent intensified dramatically since 1994 in South Africa. Xenophobia in South Africa significantly increased after the installation of the black majority democratic government in 1994.²⁶ There have also been reported cases of harassment of travellers who were on legitimate business at the Oliver Tambo Airport. The disrespectful treatment of Africa’s first Nobel winner, Prof. Wole Soyinka in 2005 was widely reported. Soyinka who was

²³ W.A. Fawole, *Nigeria’s External Relations and Foreign Policy under Military Rule (1966–1999)* (Obafemi Awolowo University Press Ltd, 2003) 156; H.Y. Al-Hassan, *Evaluating Nigerian Foreign Policy at 50* (National Press Centre, 2010) 22; S.O. Akinboye ‘Nigeria’s Foreign Policy’ in Anifowose and Enemuo (eds), *Elements of Politics* (Sam Iroansi Publications, 1999) 31.

²⁴ See also M. Strathern, ‘What is Intellectual Property After?’ in J. Law and J. Hassard (eds), *Actor Network Theory and After* (Blackwell Publishing, 1999) 159.

²⁵ Jonathan Crush and Wade Pendleton ‘Xenophobia? Citizen Attitudes to Immigration and Refugee Policy in Southern Africa’ Waterloo, ON Southern African Migration Programme. SAMP Migration Policy Series No. 30 (rep.,2004) i-49.

²⁶ O. Ogunnowo and S. Joshua, ‘Xenophobic Attacks in South Africa and Nigeria’s Foreign Policy: Rethinking Nigeria’s Afrocentrism (2019) 7(1) *African Research Review*, 1-19; O. Ogunnubi and L. Amusan, ‘Nigeria’s Attitude Towards South Africa’s Perceived Xenophobia: Exploring a Shared Hegemonic Power for Africa’s Development. In A. O. Akinola (Ed.), *The Political Economy of Xenophobia in Africa* (53-68) (Springer International Publishing, 2019); E.O. Oni and S.K. Okunade, ‘The Context of Xenophobia in Africa: Nigeria and South Africa in Comparison’ in A. O. Akinola (ed), *The Political Economy of Xenophobia in Africa* (Springer International Publishing, 2018); J. Onuoha, *Beyond Diplomacy: Contemporary Issues in International Relations* (Great AP Express Ltd., 2008); R.O. Roosevelt and O. Felix, ‘Xenophobia in South Africa: Rethinking the Nigerian foreign policy of Afrocentrism’ O. (2015) 9(4) *African Research Review* 78-91; Oluyemi Fayomi, Felix Chidozie and Charles Ayo, ‘A Retrospective Study of the Effects of Xenophobia on South Africa-Nigeria Relations’ <https://core.ac.uk/download/pdf/32225837.pdf>. Accessed 29 July 2024.

invited to deliver a lecture in honour of Mandela was detained and denied entry into South Africa, until the last-minute intervention of the authority.²⁷

In addition, violence against foreign citizens, especially persons of African descent are becoming increasingly common and intense. South Africans' perceptions of migration and immigration are a mixture of half-truths and misleading stereotyping,²⁸ which is further triggered by intense nationalism or nativism. In contradistinction with other variants of xenophobia, South African xenophobia is directed particularly at Africans of dark hues, sometimes at Asian, and never at whites. African who are derogatively referred to as Makwerekwere,²⁹ are the primary targets of these attacks, but local leaders and groups also threaten, evict, and attack South African citizens married to foreigners or those sympathetic to them.³⁰ The fact that this xenophobic attacks are usually led by political party officials, social media campaigns, and community level organisations, seems to challenge the country's constitutional commitments to political freedom, racial and ethnic tolerance, property rights, and the rule of law.³¹ They also raise fundamental issues about the scale and mechanisms of exclusion, bordering, and 'insurgent citizenship' amidst socio-political heterogeneity.³²

The South Africa police is also complicit in xenophobic attacks against foreigners. For instance, the police regularly arrest and detain foreigners based on their physical

²⁷ Olusola Ogunnubi and Uchenna A. Aja, 'Citizen Diplomacy in Nigeria-South Africa Relation' (2022) 9(3) *Journal of Ethnic and Cultural Studies* 133-151; K. Michael Masemola, 'The Airport Geography of Power as Site and Limit of NEPAD's Transnational African Assemblage' (2018) 43(3) *Africa Development* 123-138; This Day Editorial, 'Nigeria: Soyinka's South Africa Ordeal' *This Day Newspaper* <https://allafrica.com/stories/200509190547.html> accessed 29 July 2024.

²⁸ J. Hayem, 'From May 2008 to 2011: Xenophobic violence and national subjectivity in South Africa' J. (2013). 39(1) *Journal of Southern African Studies* 77-79; M.L. Hewitt, C.M. Masikane and J. Toendepi, 'Dynamics Informing Xenophobia and Leadership Response in South Africa' (2020) 20(1) *Acta Commercii*, 1-11; B. F. Ibrahim, I. Dele and H. Ukeaja, 'The Effects of Xenophobia on South Africa-Nigeria Relations: Attempting a Retrospective Study' (2019). 8(8), *International Journal of Humanities and Social Science Invention* 38-49.

²⁹ A derogatory term used for a black person who cannot demonstrate mastery of local South African languages and who hails from a country assumed to be economically and culturally backward in relation to South Africa.

³⁰ A.I. Tewolde, 'Reframing Xenophobia in South Africa as Colour-Blind: The Limits of the Afrophobia Thesis' (2020) 17(3) *Migration Letters* 433-444; J.P. Misago, 'Politics by Other Means? The Political Economy of Xenophobic Violence In Post-Apartheid South Africa' (2017) 47(2) *The Black Scholar* 40-53; T. Monson, '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, 2010); Callixte Kavuro, 'Politicians Shouldn't Incite Xenophobic Violence' *Daily Maverick* (22 July 2020) <http://www.sun.ac.za/english/Lists/news/DispForm.aspx?ID=7516> accessed 29 July 2024.

³¹ Klug, K, 'Decolonisation, Compensation and Constitutionalism: Land, Wealth and the Sustainability of Constitutionalism in Post-Apartheid South Africa' (2018) 34(3) *South African Journal on Human Rights* 469-491; D.M. Davis, 'Is the South African Constitution an Obstacle to a Democratic Post-Colonial State?' (2018) 34(3) *South African Journal on Human Rights* 359-374.

³² Jean Pierre Misago and Loren B Landau 'Running Them Out of Time: Xenophobia, Violence, and Co-Authoring Spatiotemporal Exclusion in South Africa' (2023) 28(4) *Geopolitics*, 1612; see the case of the *Union of Refugee Women v the Director: Private Security Industry Regulatory Authority* (supra).

appearance, inability to speak any South African native language, or for simply fitting an undocumented-migrant 'profile'.³³ Even, criminal elements, culprits and recidivists are protected by the locals and the law enforcement agents. For instance in 2008, a Mozambican, Ernesto Nhamuave, was set ablaze during xenophobic mob violence, no arrests were made and the case was closed despite the fact that there were eyewitnesses and video recording of the murder.³⁴ Police sometimes give assistance to looters or participate in looting foreigners' properties or allowed xenophobic attacks against foreigners.³⁵ However, in the few cases of police negligence which found its way to the court, the Supreme Court of Appeal held that police officers are liable for their failure to perform their statutory and constitutional duties as held in the leading case on state liability for police negligence, *Minister of Safety and Security v Carmichele*.³⁶ It is important to note that the complainant/respondent is a citizen of South Africa, one could only speculate whether the court will reach the same conclusion if a similar case involving a migrant is involved. In the cases of *Said and others v the Minister of Safety and Security*³⁷ and *Osman v Minister of Safety & Security*³⁸ the South African Police Services were found not culpable or discriminatory in protecting the properties of the complainants-foreigners.³⁹

Lamenting the limitations of addressing xenophobia by the judiciary, Judge Phineas Mojapelo in 2015 indicated that there were no laws to address xenophobia, and it therefore "hid" behind other crimes such as murder.⁴⁰ Thus, the case of Mido Macia, a Mozambican who was handcuffed and dragged behind a police van before dying in custody, was tried as a murder—despite clear linkages to institutionalized xenophobia perpetuated by state apparatus. Similarly, *Qwelane v South African Human Rights*

³³ N. I. Zikalala, J. T. Mofokeng and H. P. Motlalekgosi, 'Black like Me': A Critical Analysis of Arrest Practices Based on Skin Color in the Gauteng Province, South Africa' (2021) 10 *International Journal of Criminology and Sociology* 10: 652–61; S. Peberdy, *Selecting Immigrants: National identity and South Africa's Immigration Policies 1910-2008* (Wits University Press, 2009) 178; see also the speech of Buthelezi, M, 'After amnesty: The future of foreign migrants in South Africa' Address by the Minister of Home Affairs at the Southern African Migration Project Conference (20 June 1997). Pretoria, South Africa.

³⁴ Misago and Landau (n 32) 1612.

³⁵ Aljazeera 'Xenophobia in South Africa' https://Xenophobia%20in%20South%20Africa%20_%20Causes,%20attacks%20and%20history.htm; Elemanya .A. Vincent, Xenophobic attacks on Nigerians in South Africa: Causes and Implications (2022) 9(12) *International Journal of Multidisciplinary Research and Development* 84-88; Belinda Dodson 'Locating Xenophobia: Debate, Discourse, and Everyday Experience in Cape Town, South Africa' (2010) 56(3) *Africa Today* 2-22.

³⁶ 2001 (4) SA 938 (CC); 2001 (10) BCLR 995 (CC) 11.

³⁷ (EC13/08), unreported judgement handed down on 7 December 2011.

³⁸ [2011] JOL 27143 (WCC).

³⁹ See also Justin de Jager Addressing Xenophobia in the Equality Courts of South Africa (2011) 28(2) *Refuge: Canada's Journal on Refugees* 107-116.

⁴⁰ *Kiliko and Others v Minister of Home Affairs and Others* 2006 (4) SA 114 (C) at para 28

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*Commission and another*⁴¹ and *Solidarity and another v. Black First Land First*⁴² demonstrate how the law can be interpreted unfavorably toward minority groups—further contributing to a breakdown of trust in institutions tasked with interpreting the law without bias. It is also instructive that political and traditional elites’ xenophobic statements that incite violence have not been investigated or tried.⁴³

Various reasons have been advanced for this phenomenon. First, South Africans tend to exaggerate the numbers of foreigners in their country in order to problematize these migrants as a menace to be rid of, rather than an opportunity and to scapegoat non-citizens.⁴⁴ The second point is that xenophobia is a pervasive attitude of the majority of South Africans, including the poor and the rich, the employed and the unemployed, the male and the female, the black and the white, the conservative and the radical.⁴⁵ Third, the contact between the citizens and non-citizens are essentially transactional. Most face-to-face exchanges tend to be of economic transaction. Those citizens who have friends and personal acquaintances among the foreigners tend to be far more accommodating and tolerant than those who do not. Interaction, in other words, is a powerful antidote to xenophobia. Fourth, most citizens would prefer national governments to “get tough” with migrants and refugees. There is enormous suspicion that refugees are not genuine and there is significant fear that migrants are an economic threat— that migrants steal rather than create jobs.⁴⁶ Fifth, the locals disdain the new immigrants simply because of their accent and/or the colour of their skin.⁴⁷ Moreso, the immigrants and the citizens live in the same neighbourhood.

⁴¹ (686/2018). 2019.ZASCA 167; [2020] 1 All SA 325 (SCA); 2020(2) SA 124 (SCA); 2020 (3) BCLR 334 (SCA)

⁴² 163/2020) [2021] ZASCA 26 (24 March 2021).

⁴³ Okoro Ukaogo, Uche Uwaezuoke Okonkwo, Florence O. Orabueze, Virginia O. Eze & Stella Ugwu-Okoye Afro-centrism as the centerpiece of Nigeria’s foreign policy: A historical misnomer in the aftermath of xenophobic attacks in South Africa, (2020) 7 *Cogent Arts & Humanities* 1-14; J. Danfulani, ‘End of Apartheid: A Redefinition of Nigeria Foreign Policy’ (2014) 19(11) *Journal of Humanities and Social Science*, 53-57.

⁴⁴ Ayanda Charlie and Tamasin Ford ‘Inside South Africa’s Operation Dudula: ‘Why We Hate Foreigners’ BBC (18 September 2023) <https://www.bbc.com/news/world-africa-66808346> accessed 29 July 2024; Brij Maharaj, ‘Migrants and Urban Rights: Politics of Xenophobia in South African Cities’ (2009-2) 8 *L’Espace Politique Online* <http://journals.openedition.org/espacepolitique/1402> accessed July 2024; Right Watch, South Africa: Toxic Rhetoric Endangers Migrants-Stop Scapegoating Foreign Nationals Ahead of Elections (6 May 2024) <https://www.hrw.org/news/2024/05/06/south-africa-toxic-rhetoric-endangers-migrants> accessed 29 July 2024.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid; J. Hayem, ‘From May 2008 to 2011: Xenophobic Violence and National Subjectivity in South Africa’ J. (2013) 39(1) *Journal of Southern African Studies* 77–79; M. L. Hewitt, C.M. Masikane and J. Toendepi, ‘Dynamics Informing Xenophobia and Leadership Response in South Africa’ (2020) 20(1), *Acta Commercii*, 1–11; Ibrahim and others (n 28) 38–49.

Still, xenophobia has triggered a conflict between African immigrants and indigenous black South Africans. The South African Human Rights Commission Report⁴⁸ indicated that these conflicts have triggered violent attacks namely, the burning of houses, brutal murders, and looting of foreign-owned businesses by locals. According to Chimbga and Meier, migrants are attracted to South Africa because of the availability of economic opportunities, mainly in the informal sector.⁴⁹ This statement is supported by Gordon et al.,⁵⁰ who noted that KwaZulu-Natal, compared to other provinces, is far less welcoming to foreigners. Kaluba emphasizes that racism is more behavioural, while xenophobia is attitudinal.⁵¹ Xenophobia in South Africa arises from the locals claiming that the migrants rob them of job opportunities, markets, and social opportunities.⁵² In general, South African citizens have experienced unemployment for some time, but the issues that unregistered migrant workers seemingly deprive the locals of those work opportunities seem farfetched. This is because the undocumented migrants could only access opportunities in the informal sector- have to pay rent for his shop and dwelling from the locals. The fact that the latter could not compete with the former seems ludicrous. Field⁵³ contends that economic inequality is the leading cause of xenophobia in low-income areas such as South Africa. According to Gordon et al.,⁵⁴ the settlers are blamed because they are entrepreneurs threatening the livelihood of local communities as the only opportunities opened to them are in the informal sector. Okolie & Joseph⁵⁵ argue that xenophobia in the South African environment ranges from bullying, regular street harassment, government discrimination and harassment, to recurrent episodes of widespread violent attacks of varying scale and intensity. Foreign nationals living and

⁴⁸ South African Human Rights Commission Annual Report. (2010). <https://www.gov.za/documents/south-african-human-rights-commission-annual-report20102011>

⁴⁹ W.W.M. Chimbga and C. Meier, 'The Role of Secondary Schools in Averting Xenophobia in South Africa' (2014) 5(20) *Mediterranean Journal of Social Sciences* 1691–1691. <https://doi.org/10.5901/mjss.2014.v5n20p1691> accessed 29 July 2024.

⁵⁰ S. Gordon, B. Roberts and J. Struwig, Intolerable Cruelty: Anti-Immigrant Sentiment in KwaZulu-Natal (2015) 13(2) *HSRC Review* 13 <https://repository.hsrb.ac.za/handle/20.500.11910/1912> accessed 29 July 2024.

⁵¹ Daniel N. Mlambo, Nompumelelo Dlamini, Sinnah Makgoba and Luyanda Mtshali, 'The Three Facets of Xenophobia in Post-Apartheid South Africa' (2023) 10(4) *Journal of Ethnic and Cultural Studies*, 118-133; Hilary Nwaecheifu and others, 'Addressing the Emerging Issues of Xenophobic Attack and Human Rights Violations in South Africa: Adopting a Human Rights-Based Approach' (2023) 21*The Age of Human Rights Journal* 5-10; A. Kaluba, Zambia, *Tackling Xenophobia in Zambia* Times of Zambia, (Lusaka, 2016) 5. <https://allafrica.com/stories/201604251739.html> accessed 29 July 2024.

⁵² M.J. Masenya, 'Afrophobia in South Africa: A General Perspective of Xenophobia' (2017) 4(1) *Bangladesh Sociological Society Journal* 81-88

⁵³ D.N. Field, 'God's Makwerekwere: Re-imagining the Church in the Context of Migration and Xenophobia' (2017) 38(1) *Verbum et Ecclesia* 1–8.

⁵⁴ S. Gordon, et al (n 50).

⁵⁵ I.S. Okolie and O.O. Joseph, Examining the Triggers of Xenophobic Attacks in the Republic of South Africa. O. O. (2021) https://www.researchgate.net/publication/355119797_Examining_the_Triggers_of_Xenophobic_Attacks_in_Republic_of_South_Africa accessed 29 July 2024.

working in South Africa are subjected to discrimination by the locals, the police, government employees, private companies hired to administer and deliver services, and individuals in charge of detention and deportation procedures.⁵⁶ Thus, higher levels of xenophobia can translate into a larger pool of potential perpetrators of hate crimes.⁵⁷

3 Theoretical Framework

Numerous scholars have given various definitions and interpretations of xenophobia, however, the key to confronting xenophobia in the South African context is understanding the reasons behind its existence. The competition theory of xenophobia emphasizes the importance of economic factors; stating that competition for scarce resources among the locals and immigrants is the root cause of frustrations, leading to xenophobic violence.⁵⁸ Although, scarcity and competition for resource is not the sole source of xenophobia but it is an important factor. As with the distribution of wealth, the competition theory of xenophobia notes that conflict and competition increase because of increased economic stagnation. Competition over scarce resources result in tensions, violence, and intergroup conflict, a function of inter-group competition. Many scholars have used the competition theory to explain xenophobia, with emphasis on competition for housing and jobs. Thus, the hypothesis states that competition for housing or employment with African foreigners increases xenophobia.⁵⁹

There is also the related theory of inequality. First, local income inequality foster perceptions of *relative* deprivation, thus individuals may ‘feel deprived of some desirable thing *relative* to their own past, another person, persons, group, ideal, or some other social category’.⁶⁰ In principle, relative deprivation may be perceived in different domains, with respect to different reference categories and at different levels of

⁵⁶ Crush and Pendleton (n 25) i-49; R. Grosfoguel, L. Oso and A. Christou, ‘A ‘Racism,’ Intersectionality and Migration Studies: Framing Some Theoretical Reflections (2015) 22(6) *Identities*, 635–652; J. Crush and V. Williams, ‘Criminal Tendencies: Immigrants and Illegality in South Africa (Migration Policy Brief No. 10). Southern African Migration Project (SAMP, 2003); J. Crush and others, ‘The Perfect Storm: The Realities of Xenophobia in South Africa’ Southern African Migration Project (2008) <https://samponline.org/wp-content/uploads/2016/10/Acrobat50.pdf> accessed 29 July 2024.

⁵⁷ Lukas F. Stoetzer, Johannes Giesecke and Heike Klüver ‘How Does Income Inequality Affect the Support for Populist Parties?’ 2021 30(1) *Journal of European Public Policy* 1-20

⁵⁸ S. Gordon, ‘Xenophobia Across the Class Divide: South African Attitudes Towards Foreigners 2003–2012’ (2015) 33(4) *Journal of Contemporary African Studies* 494–509.

⁵⁹ N. Claasen and others, ‘Applying a Transdisciplinary Mixed Methods Research Design to Explore Sustainable Diets in Rural South Africa’ (2015) 14(2) *International Journal of Qualitative Methods* 69-9; M.A. Kingsbury, ‘Family Policy in Post-Communist Europe and the Former Soviet Union: Assessing the Impact of Xenophobia’ (The University of New Mexico, 2015).

⁶⁰ Sacha Riaz, ‘Does Inequality Foster Xenophobia? Evidence from the German Refugee Crisis’ (2024) 50(2) *Journal of Ethnic and Migration Studies* 359-378; I. Walker and T.F. Pettigrew, ‘Relative Deprivation Theory: An Overview and Conceptual Critique’ (1984) 23(4) *British Journal of Social Psychology*, 302.

analysis,⁶¹ that is, interpersonal comparisons between members of a local community with respect to income – a key source of social status in interpersonal comparisons. While the relative deprivation framework shifts attention away from absolute deprivation such as poverty, unemployment, to relative income differences and social comparisons, it is nevertheless based on perceptions of the objective income distribution: the starting point for relative comparisons is individuals' perception of their position in the (local) income distribution relative to other members of the community. As Nagel posits, 'objective inequality ... affects behaviour through subjective comparisons'.⁶² Dias,⁶³ et al also posits that there is a positive relationship between nationalism, anti-immigrant attitudes, and inequality at the cross-national.⁶⁴ In cases where the social status of natives is more closely tied to a national hierarchy, natives have stronger incentives to increase the salience and politicisation of the cleavage between immigrants and natives, because national identity only carries meaning and value in opposition to other national (foreign) identities.⁶⁵ Thereby emphasising the adverse social and political effects of economic inequality, such as linking inequality to reduced political engagement, voters suppression and electoral fraud, political violence and crime.⁶⁶

Another theoretical explanation for xenophobic tendencies in South Africa is the *isolation hypothesis*, which may be as a consequence of apartheid in South Africa.⁶⁷ The seclusion of the country from the rest of the world in the apartheid era may give a plausible explanation for the fear and distrust that South African communities have towards foreigners. The Refugee Act which replaced the apartheid regime's Aliens Control Act

⁶¹ H.J. Smith and T.F. Pettigrew, 'The Subjective Interpretation of Inequality: A Model of the Relative Deprivation Experience' (2014). 8(12), *Social and Personality Psychology Compass*, 755–765.

⁶² Thomas Nagel 'What Is It Like to Be a Bat?' (1974) 83(4) *The Philosophical Review* 435-450.

⁶³ Riaz (n 3) 363.

⁶⁴ Frederick Solt, 'Diversionary Nationalism: Economic Inequality and the Formation of National Pride' (2011) 73(3) *The Journal of Politics* 821–830; Lukas F. Stoetzer, Johannes Giesecke and Heike Klüver, 'How Does Income Inequality Affect the Support for Populist Parties' (2021) 30(1) *Journal of European Public Policy* 1–20; Lusine Grigoryan, 'National Identity and Anti-Immigrant Attitudes: The Case of Russia' in Jürgen Grimm, Leonie Huddy, Peter Schmidt, Josef Seethaler (eds), *Dynamics of National Identity: Media and Societal Factors of What We Are* (Routledge, 2016), 206-228.

⁶⁵ Moses Shayo, 'A Model of Social Identity with An Application to Political Economy: Nation, Class, and Redistribution' (2009) 103(2) *American Political Science Review* 147–174.

⁶⁶ Morgan Kelly, 'Inequality and Crime' (2000) 82(4) *The Review of Economics and Statistics* 530-539; Daniel Ziblatt, 'Shaping Democratic Practice and the Causes of Electoral Fraud: The Case of Nineteenth-Century Germany' (2009) 103(1) *Political Science Review* 1-21; T.Y. Wang and others, 'Inequality and Political Violence Revisited' (1993) 87(4) *American Political Science Review* 979-993.

⁶⁷ Morris, Allan. 1998. 'Our fellow Africans make our lives hell': The lives of Congolese and Nigerians living in Johannesburg. *Ethnic and Racial Studies*, 21 (6), 1116–1136.

believed in the idea that migration created uncertainty and immigrants were seen as “undesirable”.⁶⁸

The fourth theoretical explanation for xenophobia in South Africa is the *bio-cultural hypothesis*. This theory suggests that xenophobic violence is not applied equally to all foreigners and that in South Africa, black foreigners are at greater risk of violence than other foreigners.⁶⁹ The bio-cultural hypothesis emphasises the levels of visible differences in the physical demeanour of other foreign Africans.⁷⁰ This hypothesis could explain that though the violence is targeted against foreigners but South Africans who were thought to be foreign on the basis of skin colour or speech are mistakenly attacked. Of the 62 people who died in the 2008 attacks, 21 were South African citizens, thus, some locals could be seen as foreigners and targeted during xenophobic attacks.⁷¹

4 Legal Protection Offered Immigrants Under the South African Law

Immigration is intrinsically linked with South Africa’s history, and migrant labour contributes significantly to the economy.⁷² The ILO (International Labour Organisation) and OECD (Organisation for Economic Cooperation and Development) study posits that the contributions of migrants to South Africa is unquantifiable in terms of labour and human capital development, public finance and general economy growth. ILO and OECD study stated that ‘Immigrants appear to pay relatively more income tax than native-born South Africans who constitute 93% of the taxable population, but contribute less than 87% of total income tax. All groups of foreign-born people pay relatively more’.⁷³ Despite the migrants’ aggregate positive contribution to state finances, many indigenous South Africans would like to exclude all foreign-born persons from accessing welfare.⁷⁴ The author suggests that the South African public should be reeducated on the need to eschew entitlement syndrome.

⁶⁸ J. Jonathan Crush, ‘South Africa: Policy in the Face of Xenophobia’ *Migration Information Source* (2008). <<http://www.migrationpolicy.org/article/south-africa-policy-face-xenophobia>> accessed 29 July 2024; Crush, (n 7) 103–133.

⁶⁹ Human Rights Watch, *Prohibited Persons: Abuse of Undocumented Migrants, Asylum Seekers, and refugees in South Africa* (Human Rights Watch, New York, 1998).

⁷⁰ Harris, (n 12) 169–184

⁷¹ BBC (British Broadcasting Corporation), ‘Locals Killed in South African Attacks’ *BBC News*, (12 June 2008) <<http://news.bbc.co.uk/2/hi/africa/7450799.stm>> accessed 29 July 2024.

⁷² OECD/ILO (2018), *How Immigrants Contribute to South Africa’s Economy*, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264085398-e> accessed 25 August 2024.

⁷³ *Ibid*, 140.

⁷⁴ Steven Lawrence Gordon, ‘Immigration Policy in South Africa: Public Opinion, Xenophobia and the Search for Progress’ in Pragna Rugunanan & Nomkhosi Xulu-Gama (Eds), *Migration in Southern Africa IMISCOE Regional Reader* 57.

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The main law governing immigration of foreigners to South Africa is the Immigration Act,⁷⁵ which provided for temporary residence,⁷⁶ permanent residence,⁷⁷ exclusion, exceptions and prohibited persons,⁷⁸ offences, immigration courts, deportation of illegal immigrants and miscellaneous provisions.⁷⁹ While the Refugees Act,⁸⁰ which is the main law that governs the documentation of asylum seekers and refugees in South Africa grants certain rights to refugees.⁸¹ However, the treatment meted out to refugees and immigrants by the south African law enforcement agents, politicians and the general public is at variance with the extant laws and the courts have affirmed the rights of this category of persons in the few cases that reached the court.

Irrespective of the fact that the South Africa's Bill of Rights gives procedural protections to all persons, the rights of refugees and migrants are routinely violated. Section 12 provides that the "freedom and security of the person" secures the right to "not be deprived of freedom arbitrarily or without just cause," to "not be detained without trial," to "not be treated or punished in a cruel, inhumane, or degrading way," and to be "free from violence from both public and private sources. However, current arrest procedures for migrants and refugees may not pass constitutional scrutiny because they are manipulable and inconsistently enforced.⁸² The practice of arbitrarily accosting people to demand identification papers on the basis of their race or nationality clearly violates the right to equality under Section 9 of the 1996 Constitution.⁸³ Similarly, the police practice of identifying suspected immigrants on the basis of language, gesture, accent, or identifying marks is patently unconstitutional.⁸⁴ On 29 June 2017, the Constitutional Court in *Lawyers for Human Rights v Minister of Home Affairs and Others*,⁸⁵ declared section 34(1)(b) and (d) of the Immigration Act inconsistent with sections 12(1) and

⁷⁵ No. 13 of 2002.

⁷⁶ Ss 10-24 of the Immigration Act, 2002.

⁷⁷ Ss 25-28 of the Immigration Act, 2002.

⁷⁸ Ss 29-31 of the Immigration Act, 2002.

⁷⁹ Ss 32-50 of the Immigration Act, 2002.

⁸⁰ No. 130 of 1998

⁸¹ This law has been amended several times (2008, 2011, 2015 and 2017) but the majority of these only came into operation on 1 January 2020.

⁸² Ruvi Ziegler, 'Effective Refugee Protection in South Africa: Legislative Commitment, Policy Realities, Judicial Rectifications?' (2020) (10) *Constitutional Court Review* 65–106; Jonathan Klaaren, 'A Comment on the Human Rights Watch Report 'Unprotected migrants: Zimbabweans in South Africa's Limpopo Province' (2007) 1 *AHRLJ* 249-257. J Crush, (2001) 'Immigration, Xenophobia and Human Rights in South Africa' (rep., pp. i-39). Waterloo, ON: Southern African Migration Programme. SAMP Migration Policy Series No.22; Jonathan Klaaren, Is Constitutionality Catching? A Survey of South African Immigration Legislation and Some Constitutional Issues, in J. Crush & R. Mojapelo (eds.), *The Aliens Control Act: A Review and a Critique* (1996).

⁸³ Ibid.

⁸⁴ United Nations Refugee Agency (1998) "Prohibited Persons": Abuse of Undocumented Migrants, Asylum Seekers, and Refugees in South Africa'. <https://www.refworld.org/reference/countryrep/hrw/1998/en/40600> accessed 25 August 2024.

⁸⁵ [2017] ZACC 22; 2017 (10) BCLR 1242 (CC); 2017 (5) SA 480 (CC)

35(2)(d) of the Constitution of the Republic of South Africa, 1996 and therefore, invalid. The court reiterated compulsory compliance with the following provisions:

- (a) an immigration officer must apply the interests of justice criterion when considering arrest and detention of an illegal foreigner
- (b) a detained person shall be brought before court within 48 hours from the time of arrest;
- (c) the court must apply the interests of justice criterion when the arrested person is brought before it;
- (d) the court may authorise the further detention of the person concerned if it concludes that the interests of justice do not permit the person's release;
- (e) if the further detention of the person concerned is ordered, he or she must again be brought before court prior to the expiry of the authorized detention period and the court must again apply the interests of justice criterion at that stage;
- (f) the court may then again authorise the further detention of this person, but by no more than 90 calendar days, if it concludes that the interests of justice do not permit the person's release; and
- (g) whenever the person concerned is brought before court, he or she must be given an opportunity to make representations to the court.

Similarly, in *Nandutu and Others v. Minister of Home Affairs and Others*,⁸⁶ ("Nandutu case"), the South Africa's Constitutional Court nullified a decision of the Western Cape High Court and declared regulation 9(9)(a) of the Immigration Regulations constitutionally invalid as it discriminates against a foreign spouse and/or a child of a South African citizen or permanent resident. This decision of Nandutu is ground-breaking in protecting, respecting and fulfilling the rights of a foreign spouse and/or a child of a South African citizen or permanent resident to dignity and family life.⁸⁷

⁸⁶ [2019] ZACC 24 (Nandutu case)

⁸⁷ See also *Rayment and Others v. Minister of Home Affairs and Others; Anderson and Others v Minister of Home Affairs and Others* (CCT 176/22) [2023] ZACC 40 (4 December 2023); *Bula v Minister of Home Affairs* [2011] ZASCA 209, 2012 (4) SA 560 (SCA); *Ersuno v Minister of Home Affairs* [2012] ZASCA 31, 2012 (4) SA 581 (SCA).

5 Taxation and Xenophobia

The view that foreigners are taking jobs from local South Africans is, for the most part, not based on data.⁸⁸ Rather, it is based on anecdotal evidence which borders on fantasy. There is a big difference between reality and myth, and this myth of foreigners taking jobs from South Africans has gone on for so long that many take it to be the truth.⁸⁹ In a study undertaken by the Observatory Group on the informal economy in Johannesburg, it was concluded that the belief that migrants dominate the informal sector is false. It was found that only two out of 10 people who owned businesses in the informal sector in Johannesburg were migrants”.⁹⁰ The Observatory Group also found that black African immigrants play a beneficial role in the country by providing jobs, paying rent, paying VAT, paying tax and providing affordable and convenient goods.⁹¹ In conclusion, the Observatory Group found that 31 per cent of the 618 black African immigrants who were interviewed rented properties such as shops and houses from South Africans, and employed 1 223 people, of whom 503 were South Africans.⁹² Further, immigrants are well-integrated into the labour market in terms of employment and unemployment rates, and in general do not seem to displace native-born workers.

While the problem of illegal immigration should not be discountenanced the contribution of immigrants to the South African economy is unquantifiable. For instance, it costs the South African taxpayer R46 a day to keep an illegal immigrant in prison. It costs the taxpayers R400 000 for the repatriation of illegals from Durban.⁹³ However, the contribution of immigrant workers to gross domestic product (GDP) is estimated to be close to 9 percent in 2011. Nevertheless, immigration is raising income per capita in South Africa, while immigrants also make a positive net fiscal contribution.⁹⁴ The government’s 2017 White Paper on International Migration acknowledges the positive

⁸⁸ Y. Gao, ‘Analysis of Immigrant Employment in South Africa’ (2022) 12 *Theoretical Economics Letters* 518-529; Vivence Kalitanyi and Kobus Visser, ‘African Immigrants in South Africa: Job Takers or Job Creators?’ (2010) 13(4) *S. Afr. J. Econ. Manag. Sci.* 376-390; World Bank, New Study Finds Immigrants in South Africa Generate Jobs for Locals <https://www.worldbank.org/en/country/southafrica/publication/new-study-finds-immigrants-in-south-africa-generate-jobs-for-locals> accessed 29 July 2024.

⁸⁹ Ibid.

⁹⁰ Sally Peberdy, ‘International Migrants in Johannesburg’s Informal Economy’ SAMP Migration Policy Series No. 71. Waterloo and Cape Town (SAMP, 2016) [https://idrc-crdi.ca/sites/default/files/sp/Documents %20EN/samp-migration-series-no-71.pdf](https://idrc-crdi.ca/sites/default/files/sp/Documents%20EN/samp-migration-series-no-71.pdf) accessed 29 July 2024.

⁹¹ Ibid.

⁹² Ibid; D.C. Ukwandu, ‘Reflections on Xenophobic Violence in South Africa What Happens to a Dream Deferred?’ (2017) 9(9) *African Journal of Public Affairs* 43-57. Hashi Kenneth Tafira, *Xenophobia in South Africa A History* (Palgrave Macmillan 2018).

⁹³ Brij Maharaj and Rinku Rajkumar, ‘The ‘Alien Invasion’ in South Africa: Illegal Immigrants in Durban, (1997) 14 (2) *Development Southern Africa* 255-273 @260.

⁹⁴ OECD/ILO, ‘How Immigrants Contribute to South Africa’s Economy’ (OECD Publishing, 2018) <http://dx.doi.org/10.1787/9789264085398-en> accessed 29 July 2024.

contribution that immigration can make to the South African economy, and introduces a range of policy and strategic interventions.⁹⁵

The importance of taxation to the South African economy is better appreciated if the Tax-GDP ratio of 21 percent in 2023 is contrasted with the Nigeria's figure of 10.6 percent for the same period.⁹⁶ The South African Tax-GDP ratio dipped from 29.1 percent in 2021 to 21 percent in 2023 while the Nigerian figure climbed from 6.3 percent to 10.6 percent during the same period.⁹⁷ Xenophobic attack may be one of the reasons for the decrease in the tax to GDP ratio in South Africa. In addition, to underscore the importance attached to taxation in South Africa, an immigrant whose visa duration exceeds six months within a 12-month period is obliged to register with the South African Revenue Service (SARS) for tax purposes.⁹⁸

Currently, South Africa's tax revenue is derived mainly from four sources being- personal income tax, value added tax, companies' income tax and the taxation of the mines.⁹⁹ Tax receipts are down sharply due to xenophobic attacks and Covid-19, which is likely to further spur an already high deficit spending.¹⁰⁰ Similarly, the government's tobacco and alcohol restrictions, provoked widespread ire and protests. Covid-19 restrictions may have driven the rise of a potentially durable tax-avoiding black market in these products. Nonetheless, some politicians at times invoking nationalist and racially tinged rhetoric, used responses to the pandemic to score political points and trigger xenophobic impulse.¹⁰¹

⁹⁵ DHA, 'White Paper on International Migration for South Africa' Government Gazette, Department of Home Affairs (Government of South Africa, 2017) https://www.gov.za/sites/default/files/41009_gon750.pdf accessed 29 July 2024.

⁹⁶ OECD, (2023) 'Revenue Statistics in Africa' https://www.oecd.org/en/publications/revenue-statistics-in-africa-2023_15bc5bc6-en-fr.html accessed 24 August 2024; Chisom Michael (January 8, 2024) 'Nigeria's climb to 10.6%: Tax-GDP ratio rollercoaster across African countries as SA's dip to 21%' <https://businessday.ng/business-economy/article/nigerias-climb-to-10-6-tax-gdp-ratio-rollercoaster-across-african-countries-as-sas-dip-to-21/> accessed 24 August 2024.

⁹⁷ Ibid.

⁹⁸ Section 22 of the Tax Administration Act 28 of 2011; section 5 of the Income Tax Act, No. 58 of 1962; see also the application of the foreign employment remuneration exemption under section 10(1)(o)(ii) of the Income Tax Act, No. 58 of 1962; see also the Employment Tax Incentive Act No. 26 of 2013 (the ETI Act).

⁹⁹ Desmond Lachman and Kenneth Bercuson (eds), *Economic Policies for a New South Africa Occasional Paper 91* (International Monetary Fund, 1997).

¹⁰⁰ Wendell Roelf, 'South Africa's Revenue Shortfall to Reach \$15 Billion Due to Coronavirus - Tax Commissioner' *Reuters* (Paris, 5 May 2020); Lynley Donnelly, 'South Africa Still Heading for a Fiscal Cliff, Warns Investment Bank' *DispatchLIVE* (Pretoria, 16 July 2020).

¹⁰¹ Benjamin Roberts, et al., 'Up in Smoke: Public Reflections on Decision to Extend the Ban on Tobacco Sales' *Daily Maverick* (Johannesburg, 4 May 2020); Ivor Sarakinsky, 'Cigarettes and the Smoking Gun' *Daily Maverick* (Johannesburg, 6 May 2020); Andrew Meldrum and Nqobile Ntshangase, 'South African Bans on Tobacco, Liquor Amid Virus Stir Debate' *AP* (Johannesburg, 27 May 2020); Prinesha Naidoo, 'South Africa Booze, Tobacco Ban Created New Criminal Networks' *Bloomberg* (Johannesburg, 7 September 2020) 93; Examples include assertions that post-lockdown restaurant and agricultural jobs should go to South Africans, rather than foreign immigrants—a

Although, South Africa has a generally open foreign direct investment (FDI) regime, investors face high taxes, currency exchange volatility, substantial regulatory burdens, large locally entrenched firms, and Black Economic Empowerment Policy (BEEP) compliance costs,¹⁰² but xenophobia is a disincentive; which result in declines in tax receipt.¹⁰³ Xenophobia continues to affect the labour force and market in that, it goes further to affect Foreign Direct Investment (FDI) flows several years into the future. Hunt¹⁰⁴ argued that skilled immigrants contribute to economic development by boosting research, innovation, and technological progress. It is noteworthy to state that South Africans enjoy Nollywood films¹⁰⁵ and that xenophobia against foreigners does not necessarily extend to the cultural products. There is a large market for Nollywood DVDs, particularly among poor South Africans. Moreover, two channels showing films from West and East Africa respectively have recently been added to local subscription TV, which caters to the middle class.¹⁰⁶

Xenophobic attacks against foreigners and their businesses have immensely affected the national economic growth in both the short and longer term, Niyitunga¹⁰⁷ argued that migration is associated with economic prosperity in the host country. Migrants in a foreign land drive economic prosperity and thus influence economic growth and development in the host country.¹⁰⁸ Regarding its effects on business, Tshishonga¹⁰⁹ presented that the outbreaks of xenophobic violence against foreigners force them to go into hiding or leave their businesses unattended, as they watch their hard-earned

sensitive issue given xenophobic riots and looting in recent years—and that aid for the tourism sector be prioritized for black-owned businesses. see also Antony Sguazzin, ‘South Africa’s Virus Response Exposes Government Divisions’ *Bloomberg* (Johannesburg, 5 May 2020).

¹⁰² Economist Intelligence Unit, ‘South Africa: Investment Regulations’ *EIU ViewsWire*, (Pretoria, 1 March 2017).

¹⁰³ Congressional Research Service South Africa: Current Issues, Economy, and U.S. Relations (Updated September 17, 2020) <https://crsreports.congress.gov/R45687> accessed 29 July 2024.

¹⁰⁴ J. Hunt, *Skilled Immigrants’ Contribution to Innovation and Entrepreneurship in the US Open for Business: Migrant Entrepreneurship in OECD Countries* (OECD Publishing, 2010) 257–272.

¹⁰⁵ The term is used in the media to refer to the Nigerian film industry, which is an amalgam of the words "Nigeria" and "Hollywood", the American major film hub.

¹⁰⁶ John Sharp, ‘Fortress SA’: Xenophobic Violence in South Africa’ (2008) 24(4) *Anthropology Today* 1-3; A. Feldman, ‘Formations of Violence: The Narrative of the Body and Political Terror in Northern Ireland (University of Chicago Press, 1991); J. Ferguson, *Global Shadows: Africa in the Neoliberal World Order* (Duke University Press, 2006)

¹⁰⁷ E.B. Niyitunga, ‘A Qualitative Review of the Recurrence of Xenophobic Violence and their Effects on South Africa’s role in International Diplomacy. The 6th Annual International Conference on Public Administration and Development Alternatives (06–08 October 2021) 123. <https://univendspace.unien.ac.za/handle/11602/1850> accessed 29 July 2024; E.B. Niyitunga, ‘Good Health-Sustainable Development Nexus: Assessing the Prospects and Opportunities of Artificial Intelligence in Africa’ (2022) 11 *Afri. J. Govern. Dev.* 47–78.

¹⁰⁸ H. Adam and K. Moodley, ‘Imagined Liberation: Xenophobia, Citizenship and Identity in South Africa, Germany and Canada (Temple University Press, 2015) 37.

¹⁰⁹ N. Tshishonga, ‘The Impact of Xenophobia-Afrophobia on the Informal Economy in Durban CBD, South Africa’ (2015) 11 *J. Transdiscip. Res. South. Afr.* 163–179@ 165.

properties being looted and burned to ashes.¹¹⁰ It becomes difficult for them to re-establish their businesses, and some decide to relocate to other countries, an issue that makes South Africa lose labour force that could have boosted national economic growth and made it stable and sustainable. Mokoena states that most migrant-entrepreneurs contribute to South Africa's value-added tax (VAT) by bulk-purchasing goods from major South African wholesalers and industries.¹¹¹ Asha¹¹² and Fatoki¹¹³ posit that migrants-entrepreneurs contribute positively to the local economy by renting shops or trading spaces for two to five years from South African nationals, thereby contributing to poverty alleviation and economic sustainability. Consequently, xenophobic attacks result in lower VAT collections, less income for property owners who, under normal circumstances, generate income from rental property, and impair poverty alleviation and economic development prospects.¹¹⁴

Xenophobia may lead to isolation of the South African business sector from the rest of the world,¹¹⁵ notwithstanding that South Africa relies on human labour, such as professionals from other African states and beyond, to work in its industries and develop its academic, medical, legal, engineering, business, and scarce artisan skills.¹¹⁶ The constant occurrences of xenophobia against migrants may deter scarce skilled professionals from migrating to South Africa for employment and development. Xenophobia affects an export-led growth model, saving rates and direct foreign investment, thereby leading to lower tax revenue.¹¹⁷ Moreover, in 2008 R1.5 billion in foreign-owned businesses were damaged due to xenophobic acts. Such acts negatively impacted municipalities and governments and caused political instability since they were perceived to be slow in response to the violence.¹¹⁸

¹¹⁰ B.O. Adeleke, A.A. Omitola and O.T. Olukole, 'Impacts of Xenophobia Attacks on Tourism' (2008) 16 *IFE Psychologia* 136–147 @ 143.

¹¹¹ S.K.Mokoena, 'Local Economic Development in South Africa: Reflections On Foreign Nationals' Informal Businesses' South African Association of Public Administration and Management (4th Annual Conference Proceedings-Limpopo, 2015) 102–115.@109.

¹¹² A.A. Asha, 'Informal Small Business as Socio-Economic Adaptation Strategy of Migrants Living in Low-Income Townships and Villages of South Africa SAAPAM (4th annual conference proceedings. Limpopo 2, 2015) 298–308,

¹¹³ O. Fatoki, 'Problems Experienced by Immigrant Spaza Shop Owners in South Africa (2016) 7 *J. Econ.*, 100–106 @100.

¹¹⁴ K. Mahuni and W.G. Bonga, 'Nexus Between Doing Business Indicators and Foreign Direct Investment for Zimbabwe: A Time Series Analysis (2017) 2 *Dynamic Res. J.* 1–8,

¹¹⁵ T. Mudzanani, 'A Thematic Analysis of Newspaper Articles on Xenophobia and Tourism in South Africa' T. (2016) 22 *Afr. J. Phys. Act. Health Sci.* 335–343@ 339.

¹¹⁶ A.P. Adebisi, 'Xenophobia: Healing a Festering Sore in Nigerian-South African Relations (2017) 5 *J. Int. Relat. For. Pol.* 83–92@ 90.

¹¹⁷ E.B. Niyitunga, 'Xenophobia: A Hindrance Factor to South Africa's Ambition of Becoming a Developmental State' (2024) 6 *Frontiers in Human Dynamics* 1-12.

¹¹⁸ Tshishonga, (n 89) 163–179; S. Bekker, 'Explaining violence against foreigners and strangers in urban South Africa: Outbursts during May and June 2008' (2010) 16(1) *The African Yearbook of International Law* 125–140; P.

5 Recommendations

A careful analysis of the foregoing depicts that xenophobia benefits neither the South African citizens, its economy or the migrants, thus there is the need to stop xenophobia forthwith in order to boost the South African revenue. The article then recommends the following as antidotes.

- Seminars, workshops should be organized by South African government agencies and non-governmental agencies to educate the populace on the dangers of xenophobia, the rights of migrants and refugees and gender equality.¹¹⁹
- Programmes and policies that are seek to create employment, control the border as well boost economic advancement should be adopted by the government.
- Campaigns against xenophobia should be introduced where educational materials such as posters, stickers and stories that digitally tackle xenophobia adopted.
- Media advocacy programmes that involve radio and television interviews, public service announcement that unmask the conditions of refugees and migrants should be made.
- A complete list and figure of foreigners living in South Africa should be collected by the respective African country's embassy in partnership with the South African government.
- The government of South Africa (GSA) must address labour disparities and encourage partnership and sharing specially between skilled migrant workers and locals. Skilled migrant workers could be made to foster apprentices and create symbiotic relationship with the locals, with GSA paying the apprentices' stipends and other fees.
- Hold public officials, police officers, and local leaders accountable for their role in xenophobia. Machinery must be instituted to investigate and prosecute community leaders as well as government officials who is involved in committing, planning, or promoting xenophobic attacks.
- Undocumented migrants should be deported at the expense of their respective country rather than being attacked.¹²⁰

Fabricius, Xenophobia once again jeopardizes South Africa's interests in Africa (2017) [https://issafrica.org/iss-today/xenophobia - again-jeopardises-south-africas-interests-in-africa](https://issafrica.org/iss-today/xenophobia--again-jeopardises-south-africas-interests-in-africa) accessed 29 July 2024.

<https://issafrica.org/iss-today/xenophobia-again-jeopardises-south-africas-interests-inafrica>

¹¹⁹ A. Desai, 'Xenophobia and the Place of the Refugee in the Rainbow Nation of Human Rights' (2008) 12(2)

African Sociological Review/Revue Africaine de Sociologie 49–68.

¹²⁰ J.P. Misago, 'Towards Tolerance, Law, And Dignity: Addressing Violence Against Foreign Nationals in South Africa (International Organization for Migration 2009) 8–67 <<http://www.migration.org.za/uploads/docs/report-12.pdf>> accessed 29 July 2024.

- The governments and stakeholders of the respective countries should organize educational seminars to educate, sensitize their nationals on the need to respect the traditions, belief and laws of South Africa.
- The South African government should adopt policies and legislations that discourage and criminalize xenophobic violence and acts.
- The South African government should tighten security in communities and locations that are xenophobic violence prone.¹²¹

6 Conclusion

The article found that xenophobia reduces the tax receipts as well as the influence and prestige of South Africa, amongst other African nations. Moreover, xenophobia negatively affects FDI and by extension the multiplier effects the FDI is supposed to have on the economy; and the tax receipts it is supposed to generate as personal income tax, companies' income tax, mining tax, sales tax and VAT. Thus, the author suggests that it is in the interest of South Africa and its nationals to desist from xenophobic attacks targeted at foreigners because it affects both South African nationals and foreign migrants as stated in this article. The author suggests that instead of killing or maiming foreigners, undocumented migrants should be deported at their respective country's expense. Moreover, South Africa may adopt an expensive capitation tax like the one adopted by Canada to discourage Chinese nationals immigration to Canada. This is outlined in the 1885 *Chinese Immigration Act*, which greatly reduced the numbers of Chinese migrants moving to Canada.¹²² There is also the need to tighten the law in order to offer robust protection to migrants.

¹²¹ Josephine Azuka Onyido, 'Impact of Xenophobia on Nigerian Students in South Africa' (2018) 8(6) *British Journal of Education* 72-87.

¹²² Laura Madokoro, On Racism and Taxation: Rethinking the Chinese Head Tax, 1885-1923 <https://thenewcanadianhistory.com/2018/02/20/on-racism-and-taxation-rethinking-the-chinese-head-tax-1885-1923/> accessed 29 July 2024; Arlene Chan & Andrew McIntosh, 'Chinese Head Tax in Canada' (2020). [https:// www.thecanadianencyclopedia.ca/en/article/chinese-head-tax-in-canada](https://www.thecanadianencyclopedia.ca/en/article/chinese-head-tax-in-canada) accessed 29 July 2024.