

Seminar on policing and non-nationals:

Deficit analysis of police prevention,
detection and investigation of xenophobic
violence in South Africa



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Contents

| | |
|---|----|
| List of abbreviations and acronyms | iv |
| 1 Opening remarks | 1 |
| 2 Policing and non-nationals: Analysis of police prevention, detection and investigation of xenophobic violence in South Africa | 4 |
| 3 Research into non-nationals and xenophobic violence in South Africa | 10 |
| 4 Foreign traders, extortion and the lack of effective policing in Khayelitsha | 12 |
| 5 What is behind xenophobic violence in South Africa? What needs to be done to address this phenomenon? | 14 |
| 6 Progress in implementing NAP | 17 |
| 7 Policing and xenophobia | 20 |
| 8 Closing remarks | 22 |
| Endnotes | 23 |



LIST OF ABBREVIATIONS AND ACRONYMS

| | |
|-------------------|--|
| CSOs | Civil Society Organisations |
| DHA | Department of Home Affairs |
| DOJ&CD | Department of Justice and Constitutional Development |
| EU | European Union |
| GCIS | Government Communication and Information System |
| HSRC | Human Sciences Research Council |
| ICERD | International Convention on the Elimination of All Forms of Racial Discrimination |
| IPID | Independent Police Investigative Directorate |
| JCPS | Justice, Crime Prevention and Security |
| MoU | Memorandum of Understanding |
| MTSF | Medium Term Strategic Framework |
| NAP | National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance |
| NATJOINTS | National Joint Operational and Intelligence Structure |
| PROVJOINTS | Provincial Joint Operational and Intelligence Structure |
| SAHRC | South African Human Rights Commission |
| SAPS | South African Police Service |
| SASAS | South African Social Attitudes Survey |
| UN | United Nations |
| UNPWG | United Nations Protection Working Group |



1 OPENING REMARKS

Prof. Bongani Majola, Chairperson of the South African Human Rights Commission (SAHRC), in his opening remarks said that the SAHRC defines xenophobia as a deep dislike for non-nationals by nationals of the recipient state. Xenophobia includes all forms of discriminatory attitudes towards non-nationals. This results in the social and political exclusion of its targets. Xenophobia is manifested in several forms, including prejudice, discrimination and hostility. This often culminates in violence, abuse and hatred.

Violent attacks against non-nationals in South Africa have been a concern since 2008 when these attacks reached a peak that shocked the world. Despite many laws, policies and recommendations, xenophobic attacks on the businesses and homes of non-nationals have continued. These have recently taken a different form.

In March 2018, many African non-nationals in the road freight industry were killed. Most of the deceased were killed by groups of people claiming to be South African truck drivers aiming to force non-nationals out of the industry. The killers threw bombs at their victims' trucks, and shot, stoned and stabbed them to death. As a result, many non-nationals have had to quit their jobs even though they had valid work permits. Some of them have been unable to return to work because of the injuries they sustained during these xenophobic attacks or because of the damage to their trucks.

Most of the deceased were killed by groups of people claiming to be South African truck drivers aiming to force non-nationals out of the industry.

In 2019, 68 incidents of xenophobic violence were recorded which resulted in 18 deaths, at least 43 physical assaults, 1 449 displaced persons and about 129 looted shops. Gauteng (44 incidents of xenophobic violence) and KwaZulu-Natal (KZN) (16 incidents) were the worst-affected provinces in 2019.

Xenophobia, racism and hate crimes are social ills that continue to tear at the fabric of social cohesion in South Africa. People calling themselves Umkhonto we Sizwe Veterans have pillaged and destroyed the shops of non-nationals in Durban and this has not been followed up by any news about whether

or not they have been taken to task by the South African Police Service (SAPS). Perpetrators of criminal xenophobic violence carried out in broad daylight cannot be allowed to run rampant by the authorities turning a blind eye. This makes ordinary people believe that, if the victims are non-nationals, they are fair game. This is unacceptable in a country that calls itself a democracy, and it is unacceptable for a police service that says that it exists to prevent and investigate crime and to punish the perpetrators of crime.

The SAHRC is a member of, and participates in, the work of the United Nations (UN) Network on Migration. The Commission has taken several steps to curb xenophobia given the many violations of human rights it involves, such as the violation of the right to security of the person, the right not to be discriminated against, and the right to life. In 2008, the SAHRC conducted national hearings to investigate the nature and causes of xenophobia in South Africa and it made many recommendations, including recommendations for the attention of SAPS. Many of these recommendations have not been implemented and the SAHRC keeps on engaging with government in support of the full implementation of these recommendations. This is proving to be very difficult.

In 2020, the Commission conducted an enquiry into the violent attacks targeting non-nationals with a focus on long-distance truck drivers. Recommendations from this enquiry have not yet been released although there is ongoing engagement between the SAHRC and the Department of Home Affairs (DHA).

Prof. Majola emphasised that the Memorandum of Understanding (MoU) between the SAHRC and SAPS provides a basis for working in a complementary way on this and other issues and to help SAPS succeed in its mission. The National Development Plan states that social cohesion must be at the centre of social transformation. The research done by APCOF and others is necessary for a critical assessment of where South Africa is as a nation and what steps it can take to achieve its objectives through implementing appropriate policies, laws, regional instruments and international instruments.

Bernard Rey, Head of Cooperation for the EU Delegation to South Africa, in his opening remarks acknowledged that the issues being discussed at this workshop were extremely important for the European Union (EU). He affirmed that the EU rejects all forms of racism and intolerance and that it has introduced several initiatives in Europe to translate these political commitments into reality.

He stated that in 2008, the EU Council adopted a Framework that aims to ensure that serious manifestations of racism and xenophobia are punishable within the EU countries. In that regard, two complementary directives have been introduced. The first directive concerns the rights of victims of hate crimes and hate speech, as well as the responsibilities of police in respect of these offences. Victims must be able to report their experiences of hate crimes and hate speech to the authorities and receive protection and support. The police must register the incidents appropriately, and the perpetrators must be held accountable. A second directive bans the incitement of hatred through audiovisual media and bans the promotion of hatred or discrimination in audiovisual commercial communication.

Only a fraction of victims report incidents of hate-motivated harassment and violence to the police. Even when these incidents are reported, police officers do not always record them as hate crimes.

Despite these measures, people across the EU continue to be subjected to racism, xenophobia and other forms of intolerance because of their race, colour, religion, descent, nationality, sexual orientation, gender or other characteristics. Only a fraction of victims report incidents of hate-motivated harassment and violence to the police. Even when these incidents are reported, police officers do not always record them as hate crimes. This means that hate crimes remain unidentified or unrecorded and thus uninvestigated, unprosecuted, uncounted, and are ultimately an invisible crime.

Cross-learning within the EU, sharing experiences, raising awareness, improving data collection and monitoring trends are some of the basic measures that the authorities can put in place to step up efforts to prevent and counter the spread of intolerance and hatred. The European Commission is facilitating the exchange of information and good practices among EU member states through civil society networks and expert groups, for example, the EU Agency for Fundamental Rights, and there is scope for South Africa to participate in this work.

The EU supports South Africa's National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance (NAP), launched in 2019. In 2017, the EU provided support to the Department of Justice and Constitutional Development (DOJ&CD) to develop the capacity to analyse existing sources of data, and on how to collect and manage data. The EU continues to support South Africa to implement NAP. APCOF received a three-year EU grant to develop the capacity of SAPS to prevent and respond to xenophobic violence and hate crimes. The Democracy Development Programme in Durban has received an EU grant to build the capacity of civil society organisations (CSOs) to improve conflict resolution skills and build better relationships between local communities and migrants of African origin. Now that the president of South Africa has signed the Cybercrimes Act into law, it is likely that there will be a renewed focus on online hate speech. EU member states have extensive experience in monitoring hate speech using dedicated algorithms for early detection. Some member states are already cooperating with SAPS, and the EU is looking forward to engaging in deeper collaboration with the South African authorities on this matter.

Mr Rey said he trusted that the APCOF report that was being launched would help SAPS to better understand the gaps in its regulatory, training and management architecture with respect to preventing, detecting and investigating racist and xenophobic violence and hate crimes. He hoped that other critical stakeholders will help SAPS find solutions to address these gaps and improve its capacity to respond to xenophobia and related crimes.



2 POLICING AND NON-NATIONALS: ANALYSIS OF POLICE PREVENTION, DETECTION AND INVESTIGATION OF XENOPHOBIC VIOLENCE IN SOUTH AFRICA

Louise Edwards, Programme and Research Director of APCOF and co-author of the research report *Policing and non-nationals: Analysis of police prevention, detection and investigation of xenophobic violence in South Africa* said the report is situated within the broader context of the three-year EU-funded research grant into xenophobia and xenophobic violence. The issues are complex and, as NAP makes clear, the response of SAPS is just one component of dealing with a broader social ill.

The research is located within an analysis of the existing legal, policy and operational framework for policing xenophobic violence in South Africa and the expectations of NAP in this regard. The project takes the form of a deficit analysis of SAPS and the policing environment. Specifically:

- The oversight and accountability environment, for example, the SAHRC, the Civilian Secretariat for Police and the Independent Police Investigative Directorate (IPID); and
- The role of community policing forums as an early warning mechanism – the detection element, rather than the prevention and response elements.

The presentation in the current webinar will focus only on the SAPS element of the research.

The publication analyses deficits in the legal framework for the policing of non-nationals, as well as gaps in the implementation of the framework from an operational perspective. It argues that implementation is problematic from a human rights perspective and that there is 'over-policing' (profiling/targeting of non-nationals) as well as 'under-policing' (poor SAPS service delivery to non-nationals). The report investigates the causes of over- and under-policing, the role of SAPS recruitment and training to manage these phenomena, and compares international and local processes to address xenophobic violence and related hate crimes.

The researchers' recommendations for SAPS are evidence-based (based on the findings of the research done in Year 1) and they are tailored and targeted to what the researchers believe SAPS can achieve in the project's three-year lifespan to improve police prevention, detection and resolution of xenophobic violence and related hate crimes.

Key findings included:

Gaps in the constitutional, legislative and policy frameworks

The constitutional and legislative framework lays a solid foundation for the promotion of responsive, equitable and non-discriminatory policing services, but lacks detail in terms of how SAPS intends to implement these obligations at the institutional and operational level. There are key gaps in the constitutional, legislative and policy framework:

- NAP is silent on policing issues, and there is no SAPS policy on the policing of non-nationals and no policy for responding to xenophobic violence and related hate crimes.
- Xenophobic violence and related hate crimes are not distinct 'crimes'. Categorising them as ordinary forms of crime influences the way they are detected, investigated, recorded, internalised in terms of priorities, and understood. If the Hate Crimes Bill is passed into law, it will create new categories of crimes including xenophobia that SAPS will have to respond to.
- Sweeps and raids of immigrants take place in terms of the Criminal Procedure Act, thereby circumventing the procedural safeguards provided in the Immigration Act and the Refugees Act.

Gaps in the implementation of the constitutional, legislative and policy framework

The research found that performance in terms of one area has a direct impact on the way non-nationals experience policing in the other area, leading to the dual phenomena of over- and under-policing. If, for example, non-national shopkeepers do not see the police come forward to protect their property, this will lead to them having a low level of comfort and trust in the police.

NAP is silent on policing issues, and there is no SAPS policy on the policing of non-nationals and no policy for responding to xenophobic violence and related hate crimes.

Over-policing of non-nationals

The research found that the net effect of SAPS profiling and targeting non-nationals is a breakdown in the relationship between the police and non-nationals:

This type of over-policing can have the effect of undermining the rights of non-nationals to dignity and non-discrimination, dissuades victims from reporting crime because of fear or distrust of the police, and limits cooperation between non-nationals and SAPS in aid of early warning systems to combat the violence... [over-policing can] also perpetuate the distrust, stigmatisation and socio-economic exclusion already experienced by non-nationals in the community. Public opinion surveys show that xenophobic attitudes are highly prevalent in South Africa, across population, socio-demographic and racial markers, and are observed within the ranks of SAPS. Research indicates that policing of non-nationals reinforces, rather than counters, harmful xenophobic narratives.

Drivers of over-policing of non-nationals

1. *Crime profiling*

Perceptions of high rates of criminality in non-national communities are not supported by statistics. Also at issue is the conflation of administrative issues (the Immigration Act) and criminal law (the Criminal Procedure Act). This blurs the line between legitimate law enforcement operations with a crime detection or prevention objective, and those which are designed to target non-nationals for immigration enforcement in a way that circumvents procedural safeguards (and that may be unconstitutional).

2. *Counterfeit goods raids*

Section 13(7) of the SAPS Act is being used to cordon off areas and search for counterfeit goods. Research indicates that 'sweeps' and 'raids' follow incidents of xenophobic violence and that there is a failure to adhere to procedural rights (see the Socio-Economic Rights Institute Raids Case). Responding in this way to community concerns about 'crime and safety' with respect to non-nationals fuels xenophobia. Operation Fiela is one high-profile example of such raids.

3. *Enforcement of the Refugees Act*

Non-nationals are seen as easy targets, and this is associated with corruption. SAPS officers do not have a clear understanding or struggle to understand the asylum process. There are systemic challenges for migrants and refugees trying to obtain documentation from DHA, and there are technical issues relating to the law on migrants and refugees. There are many examples of arbitrary arrest and detention which are characterised by a misunderstanding of, or a failure to apply, the law.

4. *Corruption*

Corruption is widespread in the immigration system, and there is evidence of corruption in the policing of immigration as well. Immigration offences are low priority crimes, yet hold high penalties (both fines, prison sentences, lost income, deportation, etc.). According to analysts, this encourages the police to 'turn a blind eye' to immigration offences (because they are not a high priority) while also encouraging undocumented foreigners to offer bribes in exchange for their freedom.

Bribery and corruption are systemic and are under-reported. In addition, when a non-national pays a bribe, he or she becomes complicit in a crime, and those SAPS officers who accept bribes from non-nationals are comfortable in committing such crimes because they know it is unlikely that a complaint will be laid against them.

Under-policing of non-nationals

This manifests in the lack of effective detection, prevention and investigation of xenophobic violence and related hate crimes, as well as poor levels of service delivery to non-nationals in relation to other policing functions (particularly in the context of non-nationals as victims of crime).

Drivers of under-policing of non-nationals

1. *Xenophobia is not recognised as a specific phenomenon*

Crime arising from xenophobia is not seen as a specific phenomenon, so such incidents are attributed to general criminality and no disaggregated data is collected about crime related to xenophobia. This is reinforced by political and operational leadership that makes response and operational preparedness difficult to design and implement.

2. *Poor early warning systems*

The failure to prevent xenophobic violence and related hate crimes is directly linked to poor early warning. The need for an early warning system has been recommended again and again, and it appears in NAP (though coordinated by DOJ&CD). However, there has been a failure to establish a good national system; there are limitations in intelligence-gathering; and, where information has become available, it is not always acted upon, or responses have been slow and reactive (responses take one or two days). In addition, the Justice, Crime Prevention and Security (JCPS) Cluster mechanism to coordinate crime intelligence has failed to prevent xenophobic violence, including the most recent wave in 2019.

3. *Poor operational preparedness in SAPS*

This manifests in the poor evidence-based national operational plan to address xenophobic violence and related hate crimes.

4. *The SAPS National Instruction on public order management does not deal adequately with public violence*

The failure of the National Instruction on public order management to deal adequately with widespread public violence means police have a low capacity to deal with such violence. The SAPS strategy to respond to xenophobic violence is the evacuation of non-nationals from the area. This means that SAPS is assisting perpetrators to achieve their xenophobic objective of removing non-nationals from communities.

5. *There are weaknesses in the NATJOINTS and PROVJOINTS responses*

There are sometimes delays of one to two weeks in calling National Joint Operational and Intelligence Structure (NATJOINTS) emergency sessions when there has been widespread violence, this structure has no strategic plan to respond to xenophobic attacks (it reinvents the wheel every time), and there is a lack of coordination with the applicable Provincial Joint Operational and Intelligence Structure (PROVJOINTS).

6. *The responsiveness and accessibility of general policing services to non-nationals is discriminatory*

There is weak SAPS protection and responsiveness to non-nationals. For example, it is reported that it is often difficult for non-nationals to open a docket or get basic services such as affidavits without paying a bribe. SAPS responds slowly to victimisation (including issues relating to interpretation), and there is a lack of awareness among non-nationals of how the South African justice system works and the role and mandate of SAPS. There is case law that holds that such a lack of responsiveness is a

violation of section 7(2) of the Constitution – the obligation of the state to respect, protect, promote and fulfil the rights in the Bill of Rights.

7. Community pressure

Police fear being victimised by communities for being perceived to be on the 'side' of non-nationals.

8. Lack of accountability

There is a lack of accountability, both in terms of police investigations into violence and related hate crimes, and in terms of the arrest of instigators. Perpetrators and instigators tend to be the same people, so the lack of accountability speaks to the failure to prevent xenophobic violence. There is also a lack of internal accountability in SAPS for xenophobic behaviour, failure to deliver services to non-nationals, and corruption.

Conclusion and recommendations

In conclusion, the report found police are not necessarily representative of the communities they police. There is evidence to suggest that a more representative police membership will improve relationships with minority communities and improve policing responsiveness and integrity. There is currently no dedicated module or programme within the SAPS training curriculum that deals specifically with non-nationals or the policing of immigration issues. This includes training on the powers of the police under various legislative instruments as they pertain to non-nationals, as well as so-called diversity training to promote understanding and empathy in the context of differences of national or ethnic origin.

To the extent that the research could demonstrate, the study finds that SAPS has not implemented the findings and recommendations of existing international, regional and local processes in respect of effectively preventing, detecting and responding to xenophobic violence and related hate crimes through improving its operational preparedness, establishing early warning systems, and providing training.

The researchers' recommendations for SAPS are evidence-based (based on the findings of the research done in Year 1), and they are tailored and targeted for what the researchers believe SAPS can achieve within, say, 18 months.

Recommendation 1:

Establish an overarching SAPS policy on xenophobia, violence and related hate crimes

This policy should:

- Have an inclusive methodology;
- Acknowledge the phenomena of xenophobic violence and related hate crimes and consider the data capture implications of this;
- Consider the recruitment issues;
- Consider training (the need, not the detail);

- Develop a clear position on the use of sweeps and raids and the requirement that these are planned and conducted in accordance with the constitutional protection against non-discrimination;
- Deal with the profiling issues that conflate criminality with administrative issues associated with immigration documentation, counteract the prevailing narrative of high rates of criminality among non-nationals, and address issues of the efficacy and rights impact of profiling practices;
- Adopt social crime prevention strategies that ensure operations are planned and implemented in terms of constitutional protections and procedural safeguards; and
- Adopt zero tolerance for xenophobia in SAPS, including prioritising this as an internal disciplinary matter.

Recommendation 2:

Improve data collection on xenophobic violence and related hate crimes

This should respond to the requirements of NAP, as well as the Hate Crimes Bill if it passes into law.

Recommendation 3:

Provide training to promote compliance with legislative frameworks, and improve attitudes towards non-nationals

Training should include:

- Unconscious bias training/dignity and diversity training;
- Immigration and refugee law in South Africa;
- Specialised modules for detective services; and
- Specialised modules for public order management services.

Recommendation 4:

Engage in community outreach with non-national communities and South Africans on issues of service delivery, xenophobia and related hate crimes

This should be aligned with NAP priorities. There is already a programme in the Eastern Cape that could be replicated. The programme focuses on non-confrontational environments with community education at its core to respect, protect and promote human rights of non-nationals that could be replicated.

Recommendation 5:

Establish mechanisms and procedures to improve the prevention, detection and response to xenophobic violence

Key elements should include:

- Establishing effective early warning systems aligned with NAP under the auspices of DOJ&CD – such systems require internal SAPS support, and a modelling of the kind of system that is required;
- Reviewing and strengthening standing orders and operational procedures to improve operational preparedness, and establishing a model contingency plan and risk assessment framework; and
- Improving coordination through NATJOINTS by developing a strategic plan for NATJOINTS responses based on past experience.



3 RESEARCH INTO NON-NATIONALS AND XENOPHOBIC VIOLENCE IN SOUTH AFRICA

Dr Malose Langa, Associate Professor in the Department of Psychology, University of the Witwatersrand, said lack of data and the difficulty of researching policing meant that the APCOF study filled a gap in the knowledge of how non-nationals are being policed in South Africa. Scapegoating of non-nationals is well documented in the report, as are the phenomena of over- and under-policing. A key finding that caught his attention was that, while arrests have been made for xenophobic violence, there is no data about how many people have been prosecuted for such violence.

Areas of granular detail that would be of interest for future research include:

- An analysis of situations where communities of South Africans and non-nationals live side-by-side and there has been no violence, for example, Bokfontein.
- Diversity in the non-national population. Non-nationals are not a homogenous group. Some studies fail to recognise how non-nationals are different and the way they negotiate spaces is different, including their interaction with law enforcement officials.
- Gender and how masculinity plays itself out in interactions with male law enforcement officials.
- Police officials can also not be treated as a homogenous group. There are differences in terms of age, education, class and where their police station is located that can further enlighten knowledge in the policing of xenophobia.
- Violence is polymorphous. It cannot be separated from other forms of violence. An analysis should be done of how different forms of violence intersect with one another to produce other forms of violence. The cycle of all forms of violence should be broken, whether it is xenophobic, racist, homophobic or any other kind of violence.

South Africa's woundedness of colonial historical pain and trauma is being re-enacted in various forms of violence. It is necessary to decolonise the country's public spaces, schools, police, universities and workplaces so that violence does not continue being a daily occurrence. Psycho-social services should be provided for victims of xenophobic, homophobic and other forms of violence.

In conclusion, he reflected on work by Antony Altbeker in a 2005 study,¹ by Gareth Newham, Themba Masuku and Jabu Dlamini in 2006, and a 2007 thesis by Julia Hornberger² on police transformation in Johannesburg. In the latter, the author says that police need to be trained on human rights and Langa voiced his concerns that so little had changed since then.



4 FOREIGN TRADERS, EXTORTION AND THE LACK OF EFFECTIVE POLICING IN KHAYELITSHA

Adv. Peter Gastrow of the Global Initiative Against Transnational Organized Crime said extortion of foreign nationals in Khayelitsha only came to wider public attention late in 2020 when the COVID-19 National State of Disaster was eased. Khayelitsha was established as a township in 1983. There has been a massive influx of job seekers from the Eastern Cape and the current population is estimated at about 450 000. The area is characterised by high levels of poverty and unemployment and poor infrastructure.

Non-nationals started trading in Khayelitsha around 2006 and were successful in their efforts. Then things changed. There was a wave of robberies, stabbings and killings of non-national traders, particularly Somalis, and shops owned by non-nationals were looted and burned. Policing was ineffective, crime intelligence was poor, there was a high level of corruption, and traders lost trust in the police. In 2017, a deal was reached with gangs where spaza shop owners would pay R1 500 per month for protection. This was easy income for gangs, and there was a significant decrease in attacks on non-national traders. But this access to easy money drew the attention of other gangs and gang rivalry and violence increased. The Boko Haram gang had a foothold in extortion rackets in Khayelitsha and the Guptas gang wanted to take over those extortion rackets.

The relationship between SAPS and the community has broken down to such an extent that there is very little reporting of extortion.

The COVID-19 National State of Disaster in 2020 led to reduced income for gangs. Ineffective policing of violence against non-national traders opened the door for gangs to start extorting money from ordinary South Africans, including domestic workers and hawkers. People are being intimidated and there is widespread fear and anger. The relationship between SAPS and the community has broken down to such an extent that there is very little reporting of extortion. Non-national traders suspect collusion between the gangs and the police. They are living in fear but keeping quiet. What is happening on social media is not reflected in police dockets. The police are not doing enough, nor is local government, provincial government or the media. The institutions of state have been displaced by crime bosses, and even taxi owners have their own enforcement personnel and roadblocks to stop competition.

The growth of extortion and violence and gangs was considerably influenced by the lack of action on extortion and violence against non-nationals. The gangs realised they could get away with it. The consequence of not protecting non-nationals is that the same extortion and violence has come back to affect South Africans. Recently 15 people were killed in Khayelitsha, an event that seems to be gang-related. To some, it may not seem to be important when non-nationals are targeted by criminals, but the Khayelitsha example shows there is a consequence for South Africans when police and community leadership allow such attacks.

A new reporting system for extortion should be put in place that all role players, including non-national traders, can endorse and participate in.

Murder, violence and extortion are continuing. There have been some recent arrests for extortion and this is bringing some hope that things will change. SAPS still has the capacity and ability to act – some gangsters were recently arrested. It is difficult to police, arrest and convict organised criminals, so crime intelligence should be enhanced. A new reporting system for extortion should be put in place that all role players, including non-national traders, can endorse and participate in. An integrated strategic and provincial counter-extortion plan should be put in place. Community resilience should be strengthened and community and non-national traders should be mobilised to link up with state initiatives against violence and extortion. Police have a major responsibility to improve training and provide equal service and protection to South Africans and non-nationals alike.

Responding to a question about the number of arrests and prosecutions for extortion of foreign traders in Khayelitsha, Adv. Gastrow said there have been very few arrests, and very few dockets have been investigated. It is very difficult to obtain statistics about the number of murders. Researchers for the Global Initiative had to speak to undertakers in Khayelitsha to obtain death certificates. Extortion is expanding in Cape Town, including the central business district, but there is very little information available about it. Very few people are prepared to talk about it to researchers because they are afraid that they might be seen speaking to someone who could be a police officer or a gangster.



5 WHAT IS BEHIND XENOPHOBIC VIOLENCE IN SOUTH AFRICA? WHAT NEEDS TO BE DONE TO ADDRESS THIS PHENOMENON?

Dr Steven Gordon of the Human Sciences Research Council (HSRC) and the University of Johannesburg presented data on anti-immigrant sentiments and violence drawn from the HSRC's South African Social Attitudes Survey (SASAS).

Since it began in 2003, the SASAS annual survey has met the highest standards of social survey analysis and methodology. It is weighted to yield a representative sample of South Africa's population, rich and poor, men and women, young and old. The sample is between 3 500 and 7 000 individuals aged 16 and older, regardless of nationality or citizenship, in households that are geographically spread across the nine provinces. Of 3 500 addresses issued, the aim is for a minimum achieved sample size of 2 500 (the sample size was 3 098 in 2017). Data is collected in face-to-face interviews during the last quarter of every year and is checked by close fieldwork monitoring and back-checks.

Over the period 2003 to 2018, SASAS revealed that a minority of respondents, about 25%, would welcome all foreign nationals. About 45% would welcome some. About 26% would welcome nobody. This shows that there is a liberal minority and a similarly small anti-immigrant minority, with a larger number of people in the middle who are cautiously welcoming. The data is very durable with the share of these three opinions waxing and waning in a small band over this 15-year period.

Available data suggests that immigration is healthy for the economy.

Robust pro-immigration information was circulated shortly before the 2008 SASAS survey, but views have remained relatively consistent between 2008 and 2018, suggesting that anti-xenophobic messaging has been relatively ineffective.

Between 60% and 70% of the population agreed or strongly agreed with the statement 'South Africa should limit immigration in order to protect our national way of life' in interviews conducted in the period 6 March to 25 March 2020, as well as in interviews conducted in the period 28 October 2020 to 13 February 2021. This suggests that COVID-19 did not have much of an impact on the durability of anti-immigrant sentiment in South Africa.

Although available data suggests that immigration is healthy for the economy, SASAS 2018 data shows a substantial proportion of the adult population was seriously misinformed about the size of the foreign-born population in South Africa. A quarter of the adult population thought that between 31% and 50% of the population was foreign-born, and another quarter thought the proportion was even higher. In fact, foreign-born people in South Africa constitute only 7% to 8% of the population. The broadcast media (radio and television) is the main source of information on this topic, and it has failed to address dangerous and unfounded anti-immigrant stereotypes.

Respondents were asked about whether they had participated in violent action to prevent immigrants from living or working in their neighbourhood. The view among many SASAS respondents between 2015 and 2018 is that violence against immigrants is acceptable. When looking at the results, it is important to bear in mind that people may be disinclined to admit to engaging in illegal criminal activity. About 2% of respondents admitted to engaging in violence in the past year. About 5% admitted to engaging in violence in the more distant past. About 10% (4.5 million people) might engage in such violence. About 30 million people would never do it. Other HSRC research suggests drivers of such xenophobic views include a perception of threat, a fear of disease, a fear of crime, and linking the presence of non-nationals with high levels of unemployment, and that such views are very strongly correlated with a willingness to commit violence.

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Peaceful anti-immigrant activities harm social cohesion and act as an accelerant, a run-up, to violence against non-nationals. About 2% of respondents reported they had participated in boycotts and demonstrations recently, and about 2% had participated in the past five years. While participating in such activities is more common in urban areas, it is also prevalent in rural communities. SAPS should monitor peaceful forms of xenophobic activities because there is a strong correlation between such activities and xenophobic violence.

Respondents were asked to provide reasons for anti-immigrant violence. Most SASAS 2018 responses focused on immigrant behaviour, saying they were the cause of violence because they acted in a way that threatened locals and they were therefore attacked. There were also system-based attributions – people blamed violence on myths about foreign nationals. Significant numbers said perpetrators were motivated by emotions, for example, envy. There was a lot of victim-blaming of immigrants. This helps explain why SAPS struggles to address xenophobic violence – victims fear secondary victimisation, and victim-blaming is common and destructive to law enforcement efforts to curtail such violence.

A fifth of respondents in SASAS 2018 thought all immigrants should be expelled, and 10% said there should be stronger border management. About 8% believed foreigners should change their behaviour. There was a lack of support for anti-prejudice measures – for example, education and awareness, attitude change and community dialogue. Less than 15% of respondents rated law enforcement as a solution. About 10% cited resource management – for example, the alleviation of poverty and unemployment, as a solution for xenophobic violence.

Less than half of respondents in the SASAS surveys undertaken between 2003 and 2018 trusted or strongly trusted the police. SAPS is therefore operating in a very difficult position, given the high level of distrust and alienation from the communities they serve.

Responding to a question about whether the HSRC's research has investigated the level of xenophobic sentiment in the police and other state institutions, Dr Gordon said the SASAS survey focuses on the general population. It could be possible to expand the research to look specifically at xenophobic sentiment among state employees, for example, SAPS and the DHA.



6 PROGRESS IN IMPLEMENTING NAP

Danaline Franzman, Chief Director: Social Justice and Participatory Democracy in the Department of Justice and Constitutional Development, said the APCOF research report is an important contribution to the work of protecting the rights of all people living within the borders of South Africa. DOJ&CD bears direct responsibility for a number of deliverables in terms of the current NAP five-year programme of action for the electoral period 2019 to 2024. While the Department is the focal agency for implementing NAP across government, it is important for all role players to address the scourges of xenophobia and the high levels of anti-foreigner sentiment in South Africa.

NAP was adopted at the third World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001 in terms of the Durban Declaration, and a programme of action was adopted after the conference. DOJ&CD continued to finalise NAP over several years, working in collaboration with a multisectoral NAP Steering Committee. There were several stakeholder engagements and consultations to gather inputs from across the country. Cabinet adopted the final NAP in 2019 and deposited the document at the UN. Cabinet also approved an indicative five-year implementation plan.

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Except for four specific sections that apply only to citizens, the Bill of Rights guarantees constitutional rights to everyone within the borders of South Africa, including foreign nationals. NAP gives effect to a number of South Africa's international obligations, particularly the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), gives effect to relevant parts of the Constitution of the Republic of South Africa, 1996, and is complementary to a number of existing laws and policies, including the Promotion of Equality and Prevention of Unfair Discrimination Act ('Equality Act'). NAP was intentionally aligned with Priority 6 of the government's Medium Term Strategic Framework (MTSF) (Social Cohesion and Safe Communities), which itself gives expression to Chapter 15 of the National Development Plan 2030.

Once Cabinet approved NAP in 2019, the Steering Committee was dissolved and an interim governance structure was set up to assist DOJ&CD to lay the foundation for a more permanent multi-sectoral governance structure as envisaged in NAP. DOJ&CD is continuing to implement those aspects of NAP for which it is directly responsible, including reporting to ICERD on the implementation of NAP. The overall oversight, coordination, monitoring and evaluation of all activities by government and other stakeholders will be undertaken by the permanent NAP governance structure once it is established. This structure is expected to be chaired by the Minister of Justice.

The NAP implementation plan for the period 2019 to 2024 sets out several objectives, indicators, activities, responsibilities of specific departments, timeframes and costings. Most of the first two years was spent getting key stakeholders on board, something which was complicated by the reconfiguring and merging of various government departments after the 2019 election. The implementation of NAP by all relevant government departments is in line with the current MTSF to enable more structured and coordinated reporting on progress.

DOJ&CD uses the 2014 UN Guidelines on National Action Plans Against Racism in its implementation of NAP. Because implementation must be based on empirical evidence, the Department completed a baseline study on current levels of racism, racial discrimination, xenophobia and related intolerance based on available disaggregated statistical data and information. This study will be launched during the current financial year.

The Department is looking at how it might support civil society and other sectors to play their role in implementing NAP.

To assist foreign nationals to get to know about their rights and obligations in South Africa, the DOJ&CD website provides free and open access to relevant information. The Department has also established a database of service providers for victims of discrimination to help them assert their rights and access psycho-social support.

DOJ&CD has developed an integrated strategy for dealing with discrimination in support of NAP. Effective implementation will require a high level of coordination, and this could be part of the brief of the permanent NAP governance structure which is expected to be chaired by the Minister of Justice when it is established. The SAHRC and others recommend supporting social mobilisation and ongoing community dialogues and engagements to address myths, misconceptions, stereotypes and prejudice about non-nationals. DOJ&CD will continue to work with various stakeholders to undertake these activities in the different provinces. The Department is looking at how it might support civil society and other sectors to play their role in implementing NAP. A discussion document has been developed on a funding model for implementing NAP, and further consultation will take place about this matter with stakeholders.

In March 2021, the HSRC and Ipsos presented the findings of a survey on how refugees, asylum seekers and cross-border migrants are viewed in South Africa at a multi-stakeholder webinar in collaboration with DOJ&CD and the Government Communication and Information System (GCIS). Recommendations from this event are to be developed into a policy brief to assist with implementing NAP.

Since 2003, DOJ&CD has participated in the activities of the UN Protection Working Group (UNPWG) which started after the first outbreaks of xenophobic violence in South Africa in 2008. The Department currently co-chairs the advisory group with the UN High Commissioner for Refugees. This UNPWG provides a forum for the exchange of information on issues pertaining to the protection of foreign nationals, including refugees and asylum seekers, and a mechanism for agreeing on action to protect them.

The UNPWG holds monthly meetings, engages in outreach activities, provides technical and professional advice, shares information on what is happening on the ground, discusses new and planned government policies, and provides guidance in respect of humanitarian assistance or responses to possible threats or actual incidents of violence against foreign nationals. UNPWG participants provide updates on incidents of violence against foreign nationals, and send reports to relevant stakeholders, including local and provincial government. Hotspots are identified, and community outreach responses are arranged in collaboration with stakeholders. While messages may be sent to SAPS and the JCPS Cluster about threats or potential outbreaks of violence, SAPS is not permanently involved in the UNPWG. This is an ad hoc approach. DOJ&CD believes it is essential to involve SAPS at a national level, possibly through NATJOINTS or related structures, and to strengthen and formalise channels of communication with the JCPS Cluster.

DOJ&CD is planning to work on an early warning and rapid response system during the current financial year, and to make sure this system is aligned with the provisions of the Hate Crimes Bill and the Hate Speech Bill currently before Parliament.

DOJ&CD is working with the Department of Social Development and the International Organisation for Migration in a multiparty pilot project to strengthen migrant integration and social cohesion through stakeholder engagement, socio-economic development activities, and countering anti-migrant narratives in South Africa. This project will be rolled out over three years, starting in the current financial year, focusing on anti-xenophobia initiatives in three provinces that have been identified as being particularly at risk of xenophobic violence.

One of the deliverables for which DOJ&CD is responsible is the MTSF Priority 6 social cohesion programme coordinated by the Department of Sport, Arts and Culture. Each year, DOJ&CD is responsible for six anti-xenophobia campaigns and, since April 2020, 16 campaigns have been conducted. These include workshops, webinars, dialogues, commemorative days, radio and social media engagements. Much more work is needed at a coordinated, national level. There should be more community engagements, outreach programmes, and anti-racist and gender-sensitive human rights training to raise awareness of the harmful impact of discrimination.

Given its mandate as the custodian of constitutionalism, in 2021, DOJ&CD is leading the national programme to celebrate 25 years of constitutionalism since the adoption of the Constitution in 1996. The year 2021 also marks the twentieth anniversary of the World Conference Against Racism. The Department will mark this milestone by hosting a national conference on racism and related intolerance in the second quarter of the current financial year (around September). It is envisaged that this conference will be a mid-term review of NAP and that it will consider how to strengthen the implementation of NAP on a national level.



7 POLICING AND XENOPHOBIA

Brig. Kobus Schwartz concurred with the comments made about the difficulty of research on policing. He said SAPS researchers themselves found obtaining information from communities to be very difficult because people don't trust the police – they don't know what SAPS will do with the information. In certain environments, people will only share information with people from similar backgrounds. He would recommend certain action steps from the current webinar for the National Commissioner's attention and particularly the importance of good statistics on the issues under discussion.

It was not true that non-nationals are more involved in crime than South Africans. This misconception needed to be addressed both inside and outside of the police. During Alert Level 5 of the National State of Disaster, a SAPS study was done of case dockets of arrests or when perpetrators were identified for specific types of reported crime, including common assault, assault with intent to cause grievous bodily harm, attempted murder, murder, and rape. The survey included 150 cases of robberies from residences. Of 1 534 case dockets in the survey, only 5% of offenders were non-South Africans. Only about 7% of victims were non-South Africans. Most people arrested for carjacking and robbery at businesses were South Africans. All the people arrested for murder and rape were South Africans. The only type of crime where a large proportion of non-South Africans were arrested were robberies at residences (45% of persons arrested were Zimbabweans and another 45% were South Africans). Dr Steven Gordon's presentation said that non-South Africans constitute 7% to 8% of South Africa's population, which suggests the proportion of non-South Africans who were victims or offenders of crime is in line with current population figures.

It was not true that non-nationals are more involved in crime than South Africans. This misconception needed to be addressed both inside and outside of the police.

It is possible that SAPS officers may be negatively biased when it comes to dealing with complaints from non-South Africans. SAPS is aware of extortion. Its anti-gang strategy acknowledges that township gangs are learning from criminal syndicates which provide protection for nightclubs by, for example, extorting protection money from shop owners. The biggest challenges to dealing with extortion are a

lack of police resources, a lack of effective implementation, and a lack of good community relations because of a lack of community trust and satisfaction in SAPS.

A SAPS research proposal on how the police deal with xenophobic violence was being developed and once executed would assist SAPS in improving its response. Meanwhile, SAPS Visible Policing is aware of the need to sensitise members – particularly members at client service centres – on diversity, and on dealing with foreign nationals and victims of domestic and gender-based violence. SAPS Human Resource Development is considering bringing such training in, as well as running refresher courses for members on the front line. The SAPS Service Delivery Improvement Programme is also working on these issues. The outcomes of this project and the support it could offer would be of assistance.



8 CLOSING REMARKS

Prof. Majola said SAPS should strive to be more inclusive, reflecting the diversity of the population it serves, including recruiting more women, people with disabilities, and suitably qualified non-nationals, particularly people with experience from outside South Africa. He said non-national police officers would not consider foreign nationals as people who are in South Africa illegally. The SAHRC will raise this issue and see to what extent it may be possible, given the security issues that SAPS may raise. The Commission has various advocacy campaigns in place. Commissioner Chris Nissen has been working closely with communities affected by violence, with SAPS, and with government. The SAHRC is a small organisation. To overcome the tendency to work in silos, a broad spectrum of actors should be working on issues of common concern and the Commission, therefore, welcomed initiatives such as this.



ENDNOTES

- 1 Altbeker, A. 2005. *The Dirty Work of Democracy: A Year on the Streets with the SAPS*. Cape Town: Jonathan Ball.
- 2 Hornberger, J. 2007. 'Don't push this Constitution down my throat!' *Human Rights in Everyday Practice. An Ethnography of Police Transformation in Johannesburg, South Africa*. Unpublished PhD thesis, Utrecht University.

ABOUT THIS REPORT

The persistence of xenophobic violence and hate crime in South Africa raises critical questions regarding the ability of SAPS to address this problem.

Recent research by the African Policing Civilian Oversight Forum (APCOF) with the support of the European Union explores the complexity of this issue at legislative, systemic and operational levels.

ABOUT APCOF

The African Policing and Civilian Oversight Forum (APCOF) is a network of African policing practitioners from state and non-state institutions. It is active in promoting police reform through strengthening civilian oversight over the police in Africa. APCOF believes that strong and effective civilian oversight assists in restoring public confidence in the police; promotes a culture of human rights, integrity and transparency within the police; and strengthens working relationships between the police and the community.

APCOF achieves its goals through undertaking research and providing technical support and capacity building to state and non-state actors including civil society organisations, the police and new and emerging oversight bodies in Africa.

APCOF was established in 2004, and its Secretariat is based in Cape Town, South Africa.

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