



POLICY BRIEF: XENOPHOBIA

This policy brief is based on the outcomes of the **Expert Roundtable on Social Justice, Economic Inclusion and Immigration: A project of the Law Trust Chair in Social Justice, Faculty of Law, Stellenbosch University.**

BACKGROUND

The roundtable discussion hosted by Professor Thuli Madonsela, Law Trust Chair in Social Justice at Stellenbosch University on **18 March 2022**, brought together more than twenty experts to deliberate on issues relating to social justice, economic inclusion, and immigration.

The experts, who ranged from **academics, legal scholars, government officials, international dignitaries, activists, and NGO representatives** were invited to scrutinise aspects of South Africa's immigration policy and the plight of foreign workers through a social justice lens anchored in human rights.

The discussion was part of the Law Trust Chair's mission to promote social justice scholarship, consciousness and collaboration to accelerate social justice reform in academia and society. The event formed part of a suite of activities and projects under the Chair, aimed at mobilising the nation and the global community around a Musa Plan for Social Justice (the M-Plan), a Marshall Plan like Integrated Programme of Action for accelerated social justice advancement to end poverty and break the back of structural inequality by 2030 in pursuit of the sustainable development goals and National Development Plan objectives.

The broad **objective** of the roundtable was to explore the social justice implications of the historic and recent resurgence of discontent toward foreigners in South Africa, immigration policy, utilisation of business opportunities and employment in the formal and informal sectors of the economy. The secondary objective was to explore the nature of xenophobia through a social justice lens anchored in human rights.

CONTEXT OF XENOPHOBIA IN SOUTH AFRICA

South Africa's Constitution caters for the well-being of both citizens and non-citizens. However, xenophobia has tarnished the image the 'rainbow nation' has built since independence in 1994.

Xenophobia and immigration are increasingly pressing social justice issues in South Africa. The recent resurgence of discontent toward foreigners in the country has raised concerns. During the June 2021 unrest, a group known as Operation Dudula gained momentum in spreading its message amongst discontented South Africans. The group's message is based on the belief that undocumented foreign nationals are responsible for the rising unemployment rates, high levels of crime and the existence of criminal syndicates in the country. The group has taken measures to mobilise communities' xenophobic sentiment, through the intimidation of foreign traders and shopkeepers to have them closed down and leave the community and the organisation of demonstrations against undocumented migrants where xenophobic slogans are displayed and chanted.

While many condemn the sentiments expressed by such groups as clear signs of xenophobic rhetoric, with the accompanying fears of a possible resurgence in feelings of distrust, unease

and hatred towards foreigners that could spark violent attacks, others believe that it is the rhetoric and actions reflected in the community's legitimate effort to counteract the unemployment crisis in an area that government has neglected. Government has also been blamed for failing to implement its own immigration laws giving rise to the need for self help by affected groups.

Government's response to the recent events seemingly resulted in a proposal to amend certain legislation dealing with the regulation of foreign national workers. The Employment and Labour Minister released the National Labour Migration Policy (NLMP) and Employment Services Amendment Bill for public comment. The bill creates limits on the number of foreign nationals that are permitted to work in certain occupations, sectors or regions. Proposed change includes amendments to the Small Business Act, which seeks to limit foreign nationals from establishing small and medium-sized enterprises and trading in some sectors of the economy.

DRIVERS OF XENOPHOBIA

1. There is a significant **misunderstanding about the scale of international migration** in South Africa. Many people believe that there are more than 17 million or even 25 million international migrants in the country, when the actual number is closer to 4 million.
2. There is a **strong link between unemployment and negative attitudes** towards immigrants in South Africa. When unemployment is high, there is a tendency for people to blame immigrants for taking jobs, even though the reality is often more complex.
3. Xenophobic violence is positively associated with experience of **crime and lower levels of trust in police**.
4. Research shows that many of the statements and assumptions that fuel xenophobia are false. **Disinformation** fuels a national narrative of irreconcilable difference between South Africans and foreigners.
5. **Attitudes towards immigrants in South Africa tend to fluctuate**, but a **shocking 12%** of the adult population in 2021 indicated that they have **participated in violent action** sometime in the past to prevent immigrants from living or working in their neighbourhoods. Another 12% indicated that while they have not engaged in violent action towards immigrants in the past, they would be willing to engage perhaps sometime in the future.
6. South Africans are very **polarised** about the issue of migration, for example people are divided on whether migration has a beneficial effect on the economy.
7. 41% of the general population believe that to stop attacks against foreigners living in South Africa, **immigration needs to be restricted**, immigrants need to be **expelled** or immigrants need to be more greatly **policed**.
8. **Media depictions** of immigrants in South Africa are often negative, leading to prejudiced public perceptions of immigrants.
9. **Welfare chauvinism** plays a part in attitudes to foreigners in South Africa. There is a commonly held belief that immigrants should never have the same access to social grants and services regardless of whether or not they achieve citizenship, how many taxes they pay or how long they have resided in the country.
10. Xenophobia in South Africa often manifests as **Afrophobia**. Xenophobic violence is regularly directed at African immigrants as opposed to other forms of migrants.

CHALLENGES OF XENOPHOBIA AND IMMIGRATION

1. Developing and implementing **progressive migration policies and legislation** in South Africa is **significantly hampered by xenophobic hate crimes**. Immigrants are being blamed for social strife, particularly an inadequacy of work opportunities, economic opportunities, and security challenges. Xenophobia is an obstacle to comprehensive policy analysis, policy design and policy implementation.
2. Small businesses run by immigrants in South Africa face a **range of challenges**, including crime, xenophobia, and difficulties accessing formal and informal justice

- systems. These challenges are exacerbated by a **lack of regulation** and support for small businesses in the country.
3. **Xenophobic mobilisation** has become a **campaign strategy** for some politicians in South Africa. Anti-migrant discourse from government officials, traditional leaders and prominent members of civil society often fan the flames of violence.
 4. **Perpetrators enjoy widespread impunity** for xenophobic rhetoric and violence, leading to a lack of accountability for serious human rights violations and the flourishing of racist and xenophobic political platforms.
 5. Efforts to curb **widespread corruption** in the South African asylum and migration systems have not been successful. South Africa's asylum system can be abused by foreigners trying to legalise their stay in the country. Many applicants are economic migrants who claim asylum to buy time in order to work, study and establish businesses in the country. Other migrants stay illegally in South Africa without claiming asylum, with many seeking to regularise their stay through fraud and corruption.
 6. It is often indicated that South Africa has **beautifully drafted policies** relating to migration and refugees, yet **major problems** continue to rise. The contributing factors are lack of resources, inadequate personnel, inadequate skills and training (not enough communication/information on policies), misinterpretation of policies, unethical conduct (for example at border posts and corruption through bribes) and inconsistency in planning and budget alignment.
 7. South Africa's migration system does not consider the **gendered aspects of migration**, and fails to consider gender-specific migration drivers, trends and vulnerabilities. A lack of gender-specific data makes it difficult to determine the specificities of migrant women's engagement within the informal labour market. Migrant women often find themselves exposed to dangerous workplace conditions in the domestic and agricultural sector.
 8. The **scale of international migration** is often used as a justification for anti-immigrant activities, as well as anti-immigrant policy.
 9. Anti-immigration violence in South Africa **impacts negatively on the country's relationship with the rest of the continent**. Diplomatic ties and cooperation agreements that South Africa signed with other international communities are affected since xenophobia has become an integral component of South African socio-political system.
 10. Xenophobic attacks create a **negative perception of South Africa** as a place that is unwelcoming and hostile to migrants. This can deter foreign investors and tourists from visiting or doing business in the country.
 11. The **National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance** adopted in 2019 is in its infancy and **under-resourced** from a financial and capacity perspective.
 12. Policy formation and debates over the past two decades have increasingly been driven by **fear, myth** and **short-term political priorities**. This has restricted access to the skilled labour market and impeded informal trade.
 13. The **absence of a streamlined policy framework** perpetuates a **fragmented and inconsistent approach** to labour migration and retention of critical skills. The absence of a framework for supporting and channelling South Africans in the diaspora or wanting to work abroad is also cause for concern.

ADDRESSING XENOPHOBIA: RECOMMENDATIONS

1. Within the humanitarian regulatory framework tools **Southern Africa needs to adopt regional solidarity** and a tangible geopolitical social justice approach to dealing with all forms of migration.
2. Government should work to **advance public understanding** of the actual scale and nature of international migration in South Africa. This could include providing accurate and up-to-date information about the number of international migrants in the country and the contributions they make to the economy.

3. **Data collection** in the area of migration should urgently be improved. Government should ensure migration indicators are in line with the objectives of the Sustainable Development Goals.
4. **Alternative data sources** should be considered. It is important to triangulate data from sources such as **Health and Demographic Surveillance Systems**, surveys, and longitudinal studies to gain complementary perspectives on migration dynamics in the country.
5. **Policy gaps** that are inhibiting people's intra and inter-regional travel should be reviewed. Movement of people from rural areas to urban areas should be at the core of discussions on policy, planning and programmes in social, political and economic areas.
6. **Capacity building** with decision makers and all spheres of government is required to ensure that migration is mainstreamed into all development programmes.
7. Government and non-governmental organisations should **intensify efforts** in the design and implementation of **anti-immigrant violence campaign programmes** across South Africa. Challenging the discourse and narrative on migration is key.
8. A more inclusive and welcoming society should be promoted by **raising awareness about the rights of immigrants and refugees**, and by providing support and services to help them integrate into the broader community.
9. There should be a **move away from a security approach to a developmental approach**. Government should embrace a more progressive view of refugees and cross border migrants and provide training to promote compliance with legislative frameworks and to improve attitudes towards non-nationals.
10. **State organs should work with civil society organisations**, community groups, and other stakeholders to address xenophobia and promote social justice and inclusion in South Africa. This could include initiatives such as community engagement programmes, education and awareness campaigns, and efforts to build bridges between different cultural and ethnic groups.
11. Government should address the **root causes of xenophobia** and other forms of discrimination, including historical legacies of colonialism and apartheid, economic inequality, and a lack of education and social cohesion. The focus should be on **conflict resolution** with a **peacebuilding** approach.
12. There is an urgent need to **counter Afrophobia** and to create programmes that will facilitate proper enlightenment of South Africans on the dividends of **Pan-Africanism**, which is undermined by xenophobic attitudes. Research suggests that promoting a sense of Pan-Africanism would be extremely beneficial to creating greater social cohesion in South Africa, reducing xenophobia.
13. Policies should recognise, prioritise and **protect women as drivers of migration**. South Africa needs to update and upgrade its current migration framework to align with existing gender frameworks and gender equality commitments.
14. Effective **migrant management systems** (from point of entry, until settled) with immigrant integration strategies should be implemented.
15. Government should take **deliberate steps to increase access to economic opportunities** for all South Africans. It should also identify and support social entrepreneurs, those who live within these communities and understand the problems the communities are facing.
16. Government should **support small businesses** run by immigrants, including by providing access to financing, business training, and regulatory support. This could include initiatives such as microfinance programs and business incubators.
17. **The rule of law must be made sacrosanct** against any person or law enforcement official who is caught in the act of instigating or participating in xenophobic violence. The criminal justice system should be reinforced to apprehend, prosecute and convict individuals who perpetrate xenophobia.
18. Government and **political leaders need to set an example** by reining in their members who make xenophobic statements that blame immigrants for the country's socio-economic hardships. Attempts to implement developmental and anti-xenophobia policy and practices are futile if the mindsets of role players, including leaders at all levels of society are not addressed. The police need to be held accountable for their role in perpetuating xenophobic sentiments.

19. South Africa as a charter member of the UN General Assembly should be reminded of **fulfilling its international obligation** of protecting the rights of citizens, including immigrants, refugees and asylum-seekers in their country as enshrined and articulated in the 1965 International Convention on the Elimination of all Forms of Racial Discrimination; the 1981 African Charter on Human and People's Rights and the 1948 Universal Declaration of Human Rights.
20. Government should **collaborate with international organisations** and other **countries** to address the root causes of immigration and xenophobia, including poverty, conflict, and persecution. This could include initiatives such as development assistance programs, peacebuilding efforts, and efforts to promote human rights and justice.

CONCLUSION:

Xenophobia and immigration are complex and multifaceted social justice issues in South Africa that require a nuanced and comprehensive approach. While Xenophobia is a distinctive form of prejudice, it is also closely connected to existing challenges around social cohesion, social justice and just inclusion in general. By addressing the root causes of negative attitudes towards immigrants, Government can work towards facilitating solutions that promote social justice and economic inclusion. Government cannot afford to remain in a state of denial about xenophobia. Xenophobia is both a crisis of constitutional credibility and governability. Furthermore, there is a disjuncture between South Africa's international relations policy and its position on migration. South Africa has an obligation to support democracy and the rule of law in the region in line with international and regional standards. Immigration policies must be based on the protection and upholding of human rights of all persons living in South Africa (not only on citizens) and it must be inclusive of fair participation and access to resources, while accommodatiing diversity.

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