

10 June 2015

To HE Dr. Nkosazana Dlamini Zuma
Chairperson of the African Union

Dear Madam,

**Open letter to the African Union on the resurgence of xenophobic violence in South Africa
presented on the occasion of the AU Summit in Sandton, Johannesburg, June 2015**

We, the undersigned organisations, write to you as concerned organisations and citizens of the African continent to raise concern about the xenophobic attacks in the Republic of South Africa which have recently taken place against migrants and refugees predominantly from other African countries. We approach you as the body responsible for promoting unity and solidarity among African states. We also call on you as the body responsible for the promotion of peace, security and stability in Africa.

The objectives of the AU are *inter alia*:-

- To achieve greater unity and solidarity between the African countries and the peoples of Africa;
- To encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights;
- To promote peace, security, and stability on the continent;
- To promote democratic principles and institutions, popular participation and good governance;
- To promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments.

Between 2000 and March 2008, at least 67 people died in what were identified as xenophobic attacks in South Africa. In May 2008, a series of rapid large-scale attacks left 62 people dead and over 600 injured. Twenty-one of those killed were South African citizens, apparently because they were perceived as foreigners. The attacks were apparently motivated by xenophobia,ⁱ and have continued to occur every year since 2009. And more recently in 2015, another nationwide spike in xenophobic attacks against migrants and refugees occurred in January and again in April. The latter attacks which began in KwaZulu-Natal Province prompted a number of foreign governments to repatriate their citizens. The April 2015 attacks resulted in at least seven verified deaths, but the number is understood to be higher, and at least 5,000 migrants and refugees displaced.

We urge the AU to call upon the South African government to take concrete steps to end these attacks, prosecute perpetrators and protect migrants and refugees living in their territory from violations of their human rights, including the right to life. As organisations operating on the African continent, we are particularly concerned about the loss of lives, injuries to persons, damage to private property and the infringement of dignity of migrants and refugees living in South Africa, which are a grave violation of their rights protected under the African Charter on Human and Peoples' Rights (the African Charter). The right to life, not to be subjected to torture, cruel, inhuman and degrading treatment, and the right to strict equality before the law are non-derogable rights – not dependent on a person's status in a country.

South African President Jacob Zuma during a Freedom Day event in April made a statement that Mozambican national Emmanuel Sithole (aka Emmanuel Josias) who was brutally killed during these attacks was an illegal immigrant using a false name.ⁱⁱ The immigration status of foreign nationals who are victims of the attacks in South Africa is irrelevant. South Africa has an obligation to protect all persons within its borders.

We are concerned in particular about the situation of asylum seekers and refugees who should receive special protection but who are in a vulnerable and desperate situation following these tensions.

We are further concerned by comments made by persons in positions of authority and influence which may amount to incitement to violence and the role that these persons play in perpetuating xenophobia and intolerance. While some official statements have been made to condemn the violence, we are concerned that not enough concrete steps are being taken to prevent such attacks, prosecute perpetrators, protect migrants and refugees and prevent the mass coerced exodus of foreign nationals from the country. We call on the AU to ensure that South Africa holds leaders and persons in authority accountable for their role in inciting violence and intolerance, or for the systematic failure since 2008 to implement effective prevention and protection plans for migrants and refugees at risk of attack, property destruction and displacement.

We note statements of several governments, including the South African government, to provide assistance for individuals leaving the country. While those who wish to leave should be assisted to do so, the solution to the violence should not be to repatriate all foreign nationals, but to ensure an environment in the country in which their rights are protected. Furthermore, the acts of those carrying out attacks against foreign nationals should not be rewarded by assisting them to achieve their objective of ridding South Africa of foreign nationals.

Following the xenophobic attacks in April there have been nationwide police raids, with military presence on the streets, apparently intended to combat crime, but predominately involve arresting and deporting migrants alleged to be illegally present in the country. We call on the AU to alert South Africa to the unlawfulness of these actions. According to the Department of Home Affairs, 2767 foreign nationals have been repatriated since the April attacks began.ⁱⁱⁱ This includes some 913 Malawians, 637 Mozambicans, 17 Tanzanians and 1098 Zimbabweans. There were also reports that an estimated 400 men and women from Lesotho were deported. These repatriations and deportations are ongoing. We are concerned about the mass raids, rounding up of foreigners and ongoing deportations which do not appear to adhere to any procedural safeguards^{iv} such as investigations into immigration status; access to legal representation; ability to make representations to a court and steps taken to ensure that no refugees and asylum-seekers, to whom a duty of international protection applies, are not subjected to forcible returns. In this regard, we remind all States of the provisions of Article 12 of the African Charter which prohibits the mass expulsion of foreign nationals. We are also concerned by the heavy handed approach adopted by the South African authorities in carrying out raids and mass arrests with a view to deporting foreign nationals as a response to xenophobia. This was most recently highlighted in “*Operation Field*” which took place in Johannesburg during May. Despite Cabinet’s statements to the contrary this operation has targeted foreigners at a higher rate than citizens.

We refer the AU to the African Commission’s statement in its decision on mass expulsions from Angola^v which continue to be highly relevant to the current situation in South Africa:

“The Commission concedes that African States in general ... are faced with many challenges, mainly economic. In the face of such difficulties, States often resort to radical measures aimed at protecting their nationals and their economies from non-nationals. Whatever the circumstances may be, however, such measures should not be taken at the detriment of the enjoyment of human rights. Mass expulsions of any category of persons, whether on the

basis of nationality, religion, ethnic, racial or other considerations "constitute a special violation of human rights". This type of deportations calls into question a whole series of rights recognised and guaranteed in the Charter; such as the right to property (article 14), the right to work (article 15), the right to education (article 17 paragraph 1) and results in the violation by the State of its obligations under article 18 paragraph 1 which stipulates that "the family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical and moral health". By deporting the victims, thus separating some of them from their families, the Defendant State has violated and violates the letter of this text...

The Commission does not wish to call into question nor is it calling into question the right of any State to take legal action against illegal immigrants and deport them to their countries of origin, if the competent courts so decide. It is however of the view that it is unacceptable to deport individuals without giving them the possibility to plead their case before the competent national courts as this is contrary to the spirit and letter of the Charter and international law.^{vi}

In a later case, the African Commission stressed the importance of due process and access to legal representation which are, in the current scenario, also of significant importance:

"Time and again, in communication 71/1992, *Recontre Africaine pour la Défense des Droits de l'Homme v Zambia* [(2000) AHRLR 321 (ACHPR 1996)], the African Commission held that the mass expulsions, particularly following arrest and subsequent detentions, deny victims the opportunity to establish the legality of these actions in the courts. In the present case, there is no indication as to whether the deportees were accorded the opportunity to contact their families, much less attorneys, thereby making the requirement of exhausting local remedies impracticable."^{vii}

It further stated:

"The African Commission is of the view that the actions of the respondent state as shown in the preceding paragraphs not only denied fair treatment of the victims with opportunity to challenge their deportation but also failed to allow them opportunity to deal with their belongings. The complainant argues and the African Commission concurs that the type of deportations involved in the present case (ie mass expulsions without due process) challenge a series of rights and protections afforded by the Charter, including the right to property, and, as such, the measures taken by the respondent state in its arrest, detention and subsequent deportation of the victims 'called into question a whole series of rights recognized and guaranteed in the Charter', including the right to property. While the right to property under the African Charter is not absolute, the respondent state has not provided evidence to prove that its actions were necessitated either by public need or community interest. Without such a justification and the provision of adequate compensation determined by an impartial tribunal of competent jurisdiction, the African Commission finds the respondent state's actions in violation of the right to property under article 14 of the African Charter."^{viii}

We further draw the AU's attention to the resolution of the African Commission in April 2015 condemning the xenophobic attacks in South Africa^{ix} and request the African Union to call upon the government of South Africa to:

- i. Protect migrants, refugees and other vulnerable foreign nationals from further attacks, including by increasing impartial and effective police presence in high-risk areas and immediately implementing conflict resolution initiatives in these areas involving the Department of Home Affairs;
- ii. Provide humanitarian and other social assistance to those affected by the xenophobic attacks in the country, including counselling for trauma and access to information on services and on durable solutions for refugees and asylum-seekers;
- iii. Bring perpetrators of violence against foreign nationals to justice. To facilitate such prosecutions the Department of Justice should set up special courts, as was done during the 2010 World Cup in South Africa, to deal with all cases of violence against foreign nationals in a bid to ease the burden on the courts. Information on accessing these courts should be widely disseminated;
- iv. Investigate and bring to justice the instigators behind the perpetration of the violence;
- v. Condemn unequivocally comments by persons in positions of authority and influence which may amount to incitement to violence;

- vi. Effectively engage the broadest possible South African public, in order to curb and eradicate xenophobia and xenophobic violence. These messages should be repeated, constantly reiterated and not only heard after crises moments. They should be accessible, in local languages, should be expressed directly to communities, and should involve local leaders;
- vii. Advise and assist all those who have been victims of violence to seek redress;
- viii. Assist refugees and asylum seekers who have lost their permits to have these re-issued and put in place concrete plans for their reintegration into communities.

As stated above, in 2008, the xenophobic attacks left at least 62 dead, hundreds wounded, and contributed to the displacement of 100,000 people or more. Following those attacks the South African Human Rights Commission (SAHRC) prepared a report with their findings and recommendations^x. We call on the AU to remind the South African government of this report and call upon the government and the SAHRC to immediately take steps to implement the recommendations found therein.

In addition, we request you to call upon governments of other countries to ensure steps are taken to prevent reprisals against South African nationals in their territories.

Signed by the following organisations:

1. Southern Africa Litigation Centre
2. Amnesty International
3. Lawyers for Human Rights - South Africa
4. Sonke Gender Justice – South Africa
5. Centre for the Study of Violence and Reconciliation (CSVR) – South Africa
6. Human Rights Institute of South Africa (HURISA)
7. International Federation for Human Rights (FIDH)
8. Open Society Initiative for Southern Africa (OSISA)
9. Open Society Foundation for South Africa (OSF-SA)
10. Oxfam, South Africa
11. Youth Engage - Zimbabwe
12. Centre for Youth and Children Affairs (CEYCA) - Malawi
13. Panos Institute Southern Africa (Psaf)
14. Aids Foundation of South Africa (AFSA)
15. The Scalabrini Centre Of Cape Town – South Africa
16. Positive-Generation - Cameroon
17. Treatment Access Watch Africa
18. Coalition 15% - Cameroon
19. Cameroon Movement For UHC - Cameroon
20. Cameroun TB Group - Cameroon
21. MOCPAT - Cameroon
22. Centre for Youth Empowerment and Civic Education (CYECE) – Malawi
23. Khulumani Support Group – South Africa
24. Women and Law in Southern Africa-WLSA MOZAMBIQUE
25. Centre for Girls and Interaction (CEGI) – Malawi
26. Gay and Lesbian Memory in Action (GALA) – South Africa
27. Missão de Beneficência Agropecuária do Kubango, Inclusão, Tecnologias e Ambiente (MBAKITA) – Angola
28. Media Institute of Southern Africa (MISA)
29. United Action for Democracy, Kano – Nigeria
30. Zimbabwe Association for Crime Prevention and Rehabilitation of the Offender (ZACRO)
31. Media Rights Agenda (MRA) – Nigeria

32. Association of Human Rights Organizations (AHURIO) - Uganda
33. Socio-Economic Rights and Accountability Project (SERAP) – Nigeria
34. Service For Peace - Sierra Leone
35. MenEngage Network – Tanzania
36. MenEngage - Namibia
37. Consortium for Refugees and Migrants in South Africa (CoRMSA) – South Africa
38. Development Dynamics – Nigeria
39. Ndifuna Ukwazi – South Africa
40. Women’s Legal Centre – South Africa
41. Zimbabwe Lawyers for Human Rights
42. Initiative for Rural Development – Uganda (IRD - U)
43. Sisonke Sex Worker Movement – South Africa
44. The Wentworth Arts and Culture Organisation – South Africa
45. Men’s Association for Gender Equality (MAGE SL) - Sierra Leone.
46. Congo Men's Network (COMEN) - DRC
47. The khuphuka Project – South Africa
48. International Refugee Rights Initiative (IRRI)
49. Thohoyandou Victim Empowerment Programme (TVEP) – South Africa
50. Empowered at Dusk Women's Association (EADWA) – Uganda
51. Positive Men's Union (POMU) – Uganda
52. State of the Union Coalition
53. Men and Boys for Gender Equality (MBGE) – Botswana
54. Collectif Sénégalais des Africaines pour la Promotion de L'Education relative à l'Environnement (COSAPERÉ) – Senegal
55. Centre for Human Rights and Rehabilitation (CHRR) – Malawi
56. Malawi Network of Religious Leaders Living with or Personally Affected by HIV and AIDS (MANERELA+) - Malawi
57. Maphunziro Foundation (MAF) - Malawi
58. Women Environmental Programme (WEP) - Nigeria
59. Charles and Doosurgh Abaagu Foundation (C&DAF) - Nigeria
60. Community Emergency Response Initiative (CERI) – Nigeria
61. Lawyers for Human Rights (Swaziland)
62. Transbantu Association Zambia (TBZ) – Zambia
63. Zambia National Women's Lobby (ZNWL)
64. Boys Empowerment International - Zambia
65. Bus and Taxi Association of Zambia
66. Community Support for the Needy - Zambia
67. Office of the Grand Mufti - Zambia
68. Olympic Youth Development Centre (OYDC) - Zambia
69. Planned Parenthood Association of Zambia (PPAZ)
70. Volunteers Welfare for Community Based Care of Zambia (VOWAZA)
71. Young Women Christian Association (YWCA) - Zambia
72. Young Women in Action - Zambia
73. Kenya MenEngage Alliance (KEMEA)
74. Uganda MenEngage Network (UgaMen)
75. FEMNET - African Women's Development and Communications Network
76. Omunga – Angola
77. Treatment Action Campaign (TAC) – South Africa
78. International Commission of Jurists, Kenya (ICJ-Kenya)
79. Africa Legal Aid (AFLA)
80. Trust for Indigenous Culture and Health (TICAH) – Kenya

81. Masimanyane Women's Rights International
82. People Opposing Women Abuse (POWA) – South Africa
83. Africa International Development and The Environment in XXI century (AIDE21)
84. African Woman and Child Feature Service (AWC)
85. Coalition for Action on 1325 – Uganda
86. African Sky
87. Malawi Human Rights Resource Centre (MHRRC)
88. Forum for Women in Development, Democracy and Justice (FODDAJ) - Kenya
89. Corruption Watch – South Africa
90. Centre for Human Rights, University of Pretoria (CHR) - South Africa
91. Women's Coalition of Zimbabwe (WCoZ)
92. Humanitarian Information Facilitation Centre (HIFC) - Zimbabwe
93. Echoes of Women in Africa Initiative (ECOWA) – Nigeria
94. Young Women Christian Association (YWCA) - Nigeria
95. Institute for Human Rights and Development in Africa (IHRDA)
96. Isis-Women's International Cross Cultural Exchange (Isis-WICCE) – Uganda
97. Women and Youths Environmental Safety and Empowerment Organisation (E-WAY for Development) - Nigeria
98. Akina Mama wa Afrika
99. solidarité des femmes pour le développement intégrale (SOFEDI) - DRC
100. Treatment Advocacy and Literacy Campaign (TALC) - Zambia
101. Uganda Network of Young people living with HIV/AIDS (UNYPA)
102. Zimbabwe Human Rights NGO Forum
103. Communities' Initiative for Holistic Social Advancement (CHISA) – Malawi
104. Action Locale pour un Développement Participatif et Autogéré (ALDEPA) – Cameroon
105. Voice for Change (VFC) – Nigeria
106. Centre for Youth and Children's Affairs (CEYCA) – Malawi
107. Community Health And Information Network (CHAIN) – Uganda
108. First Lady's Save Our Youths Campaign – Nigeria
109. Coalition Ivoirienne pour la Cour Pénale Internationale (CI CPI) - Cote d'Ivoire
110. Réseau Equitas Côte d'Ivoire (REQCI) - Cote d'Ivoire
111. Groupe de Travail sur les Instruments Internationaux (GT2I)
112. Temba Community Development Services- South Africa
113. Swaziland Action Group Against Abuse (SWAGAA)
114. International Community of women living with HIV Eastern Africa (ICWEA)
115. International Federation of Women Lawyers (FIDA) – Nigeria
116. Media Institute of Southern Africa – Botswana (MISA Botswana)
117. Media Institute of Southern Africa – Lesotho (MISA Lesotho)
118. Media Institute of Southern Africa - Malawi (MISA Malawi)
119. Media Institute of Southern Africa – Namibia (MISA Namibia)
120. Media Institute of Southern Africa – Zambia (MISA Zambia)
121. Media Institute of Southern Africa – Zimbabwe (MISA Zimbabwe)
122. Media Institute of Southern Africa – South Africa (MISA South Africa)
123. Associação Justiça Paz e Democracia (AJPD) – Angola
124. Kenya Human Rights Commission (KHRC)
125. Liga Moçambicana dos Direitos Humanos (LDH) – Mozambique
126. Pan African Positive Women's Coalition-Southern Africa and Indian Ocean Islands (PAPWC-SAIOI)
127. Katswe Sistahood – Zimbabwe
128. Economic and Social Rights Centre, Nairobi – Kenya
129. Zimbabwe Women Lawyers Association (ZWLA)

130. Gay & Lesbian Network, Pietermaritzburg - South Africa

131. Love Life – South Africa

ⁱ See L.B. Landau (ed), 2011. *Exorcising the Demons Within: Xenophobia, Violence and Statecraft in Contemporary South Africa*. Johannesburg: Wits University Press; Tokyo: United Nations University Press.

ⁱⁱ This is repeated in the official communication dated 28 April of the Inter-ministerial committee issued by Minister Jeff Radebe.

ⁱⁱⁱ <http://citizen.co.za/371626/close-to-3000-foreign-nationals-repatriated-after-xeno-attacks/> According to Chief Director of Immigration Inspectorate, Modiri Matthews

^{iv} In terms of Sections 34 of the Immigration Act 12 of 2002 (as amended)

^v *Union Inter Africaine des Droits de l'Homme, Federation Internationale des Ligues des Droits de l'Homme and Others v. Angola*, African Commission on Human and Peoples' Rights, Comm. No. 159/96 (1997). *Communication 292/2004, Institute for Human Rights and Development in Africa v Republic of Angola*

^{vi} *Union Inter Africaine des Droits de l'Homme, Federation Internationale des Ligues des Droits de l'Homme and Others v. Angola*, African Commission on Human and Peoples' Rights, Comm. No. 159/96 (1997), paragraphs 16, 17 and 20

^{vii} *Institute for Human Rights and Development in Africa v Angola* (2008) AHRLR 43 (ACHPR 2008), paragraph 40

^{viii} *Ibid*, paragraph 73

^{ix} *Resolution Condemning The Xenophobic Attacks In The Republic Of South Africa - ACHPR/Res.304 (LVI) 2015*

^x Report on the SAHRC Investigation into Issues of Rule of Law, Justice and Impunity arising out of the 2008 Public Violence against Non-Nationals, http://www.sahrc.org.za/home/21/files/Reports/Non%20Nationals%20Attacks%20Report_1-50_2008.pdf