

## **OSF-SA's Convening on Xenophobic Violence**

Justice, Equality and Rights (JER) Programme

24 October 2019

---

### **Introduction**

The Open Society Foundation for South Africa (OSF-SA) on 4 October 2019 hosted a dialogue with civil society organisations (CSOs) in response to incidents of xenophobic violence which occurred in early September 2019 in the inner cities of Pretoria and Johannesburg. The Foundation prior to this convening made a public statement to condemn not only xenophobic violence, but also violence against women – both of which are endemic in our society. It called on its grantees, government and the general public to collectively deal with violence in all its manifestations to ensure the safety and security of all those living in South Africa.

The dialogue presented an opportunity for OSF-SA to join hands with its affiliates – the Open Society Initiative for Southern Africa (OSISA) and the OSF Africa Regional Programme (AfRO) – to deal strategically with the scourge of xenophobic violence which continues to rear its ugly head in South Africa. The conversation was opened by Adam Andani (Acting JER Programme Manager) who welcomed participants, including the newly appointed OSF-SA Executive Director, Bulelwa Makalima-Ngewana, donor representatives, grantees, and colleagues from the OSF AfRO office, Brian Kagoro (AfRO Programme Director) and Jeggan Grey-Johnson, who assisted with facilitation. While the dialogue sought to glean thoughts from participants across three strategic themes: Community engagement, Policy and legislation on migration, and Regional collaboration/engagements, which were deemed as imperative focus areas, its main objectives were to:

- *Create a safe space for dialogue that seeks to understand the key drivers of xenophobic violence and unearth possible solutions/strategies.*
- *Bring representatives from different CSOs, communities and nationalities to deliberate on practical local solutions to xenophobic violence.*
- *Create a network of organisations to challenge xenophobic attitudes and shape narratives that fuel xenophobia and obstruct social cohesion efforts in South Africa and beyond.*
- *Share advocacy strategies to strengthen and challenge legislation to uphold the protection and liberties of asylum seekers, refugees and migrants.*
- *Secure commitment to take resolutions aimed at building social cohesion in the region and continent, working with governments and regional bodies.*

As part of the opening remarks the OSF-SA's Acting Executive Director, Milly Potgieter, briefed the audience on the ramifications of migration as an ongoing global issue and why it is critical to secure the rights of migrants across the world. Ms Potgieter made special mention of the Casual Workers Advice Office (CWAO) whose office was looted in the wake of the xenophobic violence. Ms Potgieter stated that in advancing the rights of marginalised groups the CWAO had sent a strong political statement by re-setting up its office immediately, with the support of OSF-SA and many others. She reminded participants about the African Union's Agenda 2063 declaration, which seeks to achieve *an integrated, prosperous and peaceful Africa, driven by its own citizens, representing a dynamic force in the international arena*. And concluded with a clarion call to civil society to promote the aspirations of Agenda 2063 which, if achieved, will move Africa closer to a continent of expanded horizons where citizens are free from fear, disease and want.

### **Presentation and discussions**

In setting the scene for the discussions, the event kicked off with a special presentation on “*Trends, causal factors and responses to xenophobic violence in South Africa*” by Dr Jean Pierre Misago (Senior Researcher and Postgraduate Coordinator at the African Centre for Migration and Society [ACMS]). Dr Misago's presentation stated that xenophobia is a global phenomenon that requires a multisectoral approach to address it. It manifests in different ways, with violence being only one form. People are also denied access to services such as health and education, are harassed if they “look different”, and have laws and by-laws selectively applied to them.

This presentation demonstrated a spike in xenophobic violence. From 1994 to September 2019, the highest incidence rate occurred in 2008 (almost 110 incidences), followed by 70 incidences in 2015. Though there has been a high incidence rate annually since 2008, 2019 has seen the most recorded incidents in the first 9 months of any year. Gauteng is the most affected province, followed by the Western Cape and KwaZulu-Natal. There have been 28 incidents in September 2019 alone, and the ACMS is aware of under-reporting of incidents. The analysis noted that attacks had moved beyond the targeting of individuals to industries (as evidenced by the truck drivers' war). Dr Misago cautioned that we should be very worried. It has been reported that some perpetrators have threatened that when they are done with the trucking industry, they will target other industries. He noted that NGOs comprise an industry, and it is very important to monitor these threats.

It also noted a few critical causal factors:

- *(Relative) socio-economic and political deprivation*: The feeling that “I don't have something because a foreigner took it from me”; as well as the feeling that “councillors do not represent my interests and I am not heard”.
- *Political economy*: Groups behind the violence are known, and we are seeing local violent populism for own interests.
- *Political mobilisation*: This takes the form of collective violence which requires mobilisation, a call to violence, and tasks performed towards common objectives. Again, we are seeing violence committed by local groups who have an interest in using the violence opportunistically.
- *Governance*: The research shows that the above cannot happen if governance does not allow it. Xenophobia is a governance issue. There is complicity, impunity, a lack of conflict resolution mechanisms, service delivery failures, etc. Politicians are popularists and will not address issues where the consequences are negative.

Responses from the state and civil society in respect of xenophobic violence are noteworthy. In terms of responses from the state, it was indicated that these are often characterised by denialism, a lack of political will and impunity. No one is held accountable even in cases where the instigators and perpetrators are known. What can we do when those behind the violence benefit from it, and violence is the rational choice when the benefits outweigh the cost? Dr Misago referred to the National Action Plan (NAP) to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance (launched on 25 March 2019), and called it “a plan without a plan”, questioning whether we could build on it. He noted that the President has made commitments; and without state involvement it is not possible to stop the violence. So, should this be an opportunity?

On the civil society front, Dr Misago noted three issues:

- A lot of work has been/is being done, including interventions in line with mandates and expertise emanating in research (books and papers, etc.); recommendations to government; successful litigations; and hearings by Chapter 9 institutions. Donors have supported the work.
- Is it working / have we made a difference? This is a moment for self-reflection. We have achieved some successes in our own line of work. We may have made small differences where we are. But have we failed in ensuring structural change? Many recommendations to government have been ignored. The violence, if anything, has increased.
- Is our work sufficiently evidence-based (refer to the causal explanations)? How do we know what will work? Business either does not know about the ACMS research or does not believe it, since business has now formed a fact-finding mission to try and understand the factors of the violence.

In conclusion, Dr Misago remarked that “As busy as we have been, we have also collectively failed”. He hoped the dialogue would provide an opportunity for introspection and generate meaningful ideas on what can be done differently to combat xenophobic violence (Xenowatch website: [www.xenowatch.ac.za](http://www.xenowatch.ac.za)).

After this presentation participants broke into groups to deliberate on the focus areas of the dialogue.

### **Community engagement**

Actions aimed at addressing the scourge of violence of any kind must involve the community/ies in which the violence occur. Through community-driven approaches, interventions designed to build social cohesion, shift attitudes, and ensure peace and stability are more likely to achieve meaningful results than top-down approaches devoid of community engagement. With this recognition, this discussion sought to elicit responses to pertinent questions in respect of xenophobic violence. Participants among others deliberated key questions, including: How do we effectively engage communities (‘hotspots’) prone to xenophobic violence? What key resources are required to address xenophobic violence? What strategies or approaches should be adopted to build critical public awareness of the rights of migrants, refugees and asylum seekers? How do we change and challenge negative narratives and attitudes about xenophobia? How do we build on existing efforts aimed at building social cohesion in violent communities?

Group reflections:

- Political rhetoric around the elections perpetuated the violence.
- Xenophobia in South Africa is particularly violent.
- Is it wise to separate xenophobic violence from general violence? Generalised violence is now framed as xenophobia. Xenophobia is a form of vigilantism. Violence is inter-generational.
- The attacks are brazen and well-organised.
- Lawlessness that goes unpunished is what legitimises these actions.
- We need to understand why communities are so angry.
- Violence reflects poverty and harsh socio-economic conditions.
- The underlying issue is a lack of trust in the governance system: our systems keep letting us down and citizens feel disempowered.
- There is violence across the continent, and so we must not deal with this violence in isolation.
- Borders are imposed and should not be of consequence.



# OPEN SOCIETY FOUNDATION FOR SOUTH AFRICA

25 Years of Promoting Human Rights, Advancing Constitutionalism  
and Supporting the Values of an Open Society in South Africa

1993 - 2018

- What does “internal” migration look like within South Africa, and what pressures does this place on resources, especially in Metros?
- Capital is also a determinant of migration; people “follow the money”.
- Drugs have escalated the exploitation of under-age children into sex work and trafficking.
- One’s humanity is most important, particularly for the marginalised.
- The media has contributed to the violence.
- South Africans have not healed from our violent past; no one wants to talk about this and unpack where the violence comes from.
- Need to deal with the construct of a nation and the meaning of national boundaries.
- Use the know-how of communities and desist from using a top-down approach to finding solutions.
- Review the progress that has been made in terms of research, recommendations, litigation, interventions, etc. Establish oversight structures that can hold government accountable.
- Criminality must be prioritised and curbed, and policing must be strengthened.
- The Hate Crimes Bill should be a deterrent.
- Need to frame discussions in the context of capital being a determinant of migration; and migration must be decriminalised.
- Communities need a responsive local government that takes community concerns seriously.
- Communities must be organised and must develop common identities.
- The private sector must be held accountable for its contribution to the violence.
- Corruption needs to be comprehensively tackled.
- Prejudice must be dealt with; Black lives should matter more. The social engineering of spaces must be re-visited.
- Leadership in different countries must come together with stakeholders to find solutions.
- Need to document and learn from success stories. Community dialogues are key.
- Black working class women are often the cornerstone of societies. It is particularly important to engage women as change agents when working in communities.
- Government structures must be reviewed in order to ensure greater responsiveness.
- Civil society needs to play a much more robust role in holding government accountable.
- Sensitisation is key; need to find solutions to hold both traditional print and social media accountable.
- Understand how we can effectively engage communities prone to xenophobic violence.
- Participants also reflected on “Ungoverned spaces”: spaces where there is limited or no presence of government and no service delivery; or where these operate inadequately. Such spaces are opportune spaces for violence to erupt. The following were noted in respect of ungoverned spaces.
  - NGOs that work in isolation were flagged as impediments to success, when there is an eco-system of mutually reinforcing economic, social and other factors that can trigger violence.
  - Diagnosing violence in single cases does not contribute to the desired structural changes. So, for example, when the trucks were burnt the owners did not show up. Why not? Could it be that the truck owners are fighting? Are any of us working with the truck owners?
  - Could there be sets of constituencies that are beneficiaries of the violence, for example, the turf wars in the drug peddling space? The fact that the violence is recurring means

there are many layers, and the problem is structural. When we intervene, we need to understand how we must work together so that no aspects are left untouched.

- It is crucial to understand the role of the media, including social media, and how it is being used, along with the peddling of fake news. We also need to understand the role of those who fund political parties and how they push their agendas.
- Xenophobia should not be reduced to a problem of Black and poor people. This racialises the problem as a lack of humanity within certain groups of people.

### **Policy and legislation on migration**

In respect of policy and legislation on migration, it is recognised that these play an important role in shaping movements of people, as well as dictating the rules that govern migration. Thus, interventions to address xenophobia and safeguard the rights of non-nationals should not overlook the current positioning or outlook of South Africa's migration policy. Some key questions that informed this discussion included among others: What are the gaps and opportunities for South Africa with respect to migration reform? How can the criminal justice system (SAPS, courts, and other law enforcement agencies) respond effectively to xenophobic incidences? How do we build social capital between SAPS and communities? How do we hold the police accountable? How do we enhance and strengthen the oversight role (and performance) of government departments such as the Department of International Relations and Cooperation, and Home Affairs to tackle xenophobia? How do we strengthen existing protection for migrants, asylum seekers and refugees in South Africa?

Group reflections:

- Xenophobia is caused by a variety of issues and it is important to learn from other international experience.
- The most important question to understand is "Who stands to benefit?". The Institute for Security Studies thinks that government is desperate for a solution, and it is worth working on an appropriate focus on government.
- Organisations such as the Nelson Mandela Foundation have convening capacity which must be leveraged.
- Take advantage of litigation-set precedents with regards to xenophobia.
- CSOs must work with different levels of leadership – both formal and informal – in keeping them accountable.
- Advocacy and training are vital and must involve communities.
- South Africa has good legislation and policies – the problem is implementation. For example, policies regarding gender-based violence have not been enforced effectively.
- Need to unpack the role of the police in helping or hindering efforts aimed at tackling violence.
- Pressurise police to act on threats, as well as the Department of Home Affairs to be accountable and issue people with documentation.
- Social cohesion is all important. Communities and individuals need to share skills and spaces.
- Need to set up circles for healing.
- Could it be time for us to call for all "undocumented people" to get their documentation from Home Affairs? It was noted that this had been done before by Minister Nkosazana Dlamini-Zuma with foreign nationals from Mozambique and Zimbabwe.
- We don't need to be so hard on ourselves in terms of no impact – there is no telling what things would be like without the interventions from organisations working in this space. There may be learnings from West Africa (ECOWAS) where, since 1971, there has been one ID document for

movement within the region. However, it was pointed out that this has also brought tensions and backlashes. The issue is one of class – it is easy for the rich to benefit; not so for the poor – who are seen to be “taking” services and opportunities from others.

- What do we do with an inherited police force that is patriarchal, misogynous, and often very violent in its law enforcement activities?
- We must bear in mind that we already have a migrant population, which is expected to grow as climate change impacts growth and livelihoods.
- If the Constitution does not seem to be supporting our work, then we must not assume there is something wrong with the Constitution; we must strengthen our ability to implement our Constitution for the benefit of all who live within South Africa.

### **Regional engagements**

The aim of this discussion was to elicit ideas on how regional bodies and national governments in SADC and the continent at large can be engaged in interventions to address xenophobia and ensure peace and solidarity among nation states. This discussion was driven by several key questions including: How do we ensure treaties and conventions in respect of protections for refugees, migrants and asylum seekers are enforced effectively in SADC member states and South Africa? What role can regional bodies such as the African Commission on Human and Peoples’ Rights and the African Peer Review Mechanism (APRM) play in addressing xenophobia and related issues in the SADC region? How do we build meaningful collaborations to foster solidarity in the SADC region and on the continent?

Group reflections:

- There is a lack of information on migration. The focus has been on the most vocal migrant groups e.g. Nigerians. Protocol and policies exist but are not being fully utilised. The African Union (AU) is not taken seriously and there is a disjuncture between the protocols and communities, and communities (both victims and perpetrators) are not aware of the protocols that exist.
- Triggers of xenophobia and xenophobic violence include:
  - Socio-economic hardships. The trend in violence against fellow Africans is inflicted in communities where they live. Violence is among fellow community members. The victims are not strangers to the perpetrators. What is the possibility of creating dialogue between those in the community? The dialogue must examine socio-economic challenges (context is looting).
  - Populist rhetoric by politically influential people, for example, the Mayor of Johannesburg and the Deputy Minister of Police. They distort statistics. Some CSOs have responded e.g. Sonke Gender Justice lodged a complaint with the South African Human Rights Commission (where they experienced continuous delays).
  - The current global climate. There is a lot of anti-migrant and xenophobic sentiment (e.g. Brexit and Trump) which impacts on South Africans.
  - Retrenchments and job shortages.
  - The gendered lens that enables men to say things like “Nigerians are taking our women”.
  - Protecting economic advantage (e.g. historically between Nigerians and Ghanaians). It is noted that this is not exclusive to South Africa.
  - The perception that “other” Africans commit more crime than South Africans.
- South Africa has some strong and powerful CSOs who operate robustly within its borders. More work is required beyond our borders. For example, the African Commission on Human and People’s Rights places on South Africa an obligation to respect the rights of migrants.

- Options are available for action through the AU. We can appeal to the African Commission on Human and People's Rights to intervene. It will provide an opportunity to tell the story of the victims and instigators. It is obligated to hear the stories and follow through. Consider opening a case against the South African government for not meeting its obligation to respect the rights of migrants.
- The Pan-African Parliament (as a representative of African leaders). We could engage with law makers across the continent to seek resolutions and have the issue escalated to the Council.
- The Prison Security Council of the AU can also be engaged.
- The APRM measures compliance of countries to legislation and carries out country review reports. It has identified xenophobia as a threat to growth and has commented on the latest spate of xenophobic attacks. It can be approached to meet with various stakeholders and embark on an intervention.
- It was noted that accountability and enforceability within the AU is a problem. Important cases have not been dealt with satisfactorily e.g. the Nubian Children case where the AU gave timelines for delivery, but there is no evidence of reporting on progress. We also need to get African leaders to meet so the process of finding solutions to tackle xenophobia is co-created.
- There are opportunities and challenges in the Southern African (SADC) Region e.g. the protocol on free movement. SADC is less integrated than ECOWAS; and it has no migration policy. It has looked at the facilitation of movement as a means of securitising issues. Instead of free movement Southern African countries agreed on regulated movement within and between certain Southern African countries. South Africa, Namibia and Botswana are refusing greater free movement. There are weak international and regional laws leading to the exclusion of refugee migrants. With regards to migration policy frameworks, South Africa has one, Namibia is working on one, while the rest of the SADC does not.
- A solidarity framework to involve political parties and sector partners should be developed.
- The SADC Tribunal was "killed", making the region poorer.
- The White Paper on International Migration (South Africa). It is not migrant friendly. It states that to be able to migrate you must "add value".
- It is important to hold each other accountable on a state-state level and establish mechanisms to address the push factors of migration. The culture of impunity and lack of accountability leads to exacerbation of the challenges related to push factors of migration, an internal focus, and a protectionist stance within migrant receiving countries.
- It is vital to consider proposals and options at the inter-continental level. Perhaps commission a fact-finding mission to South Africa where civil society and others can speak to the issue in a non-threatening manner and meet with victims and perpetrators. Use the voices of victims who can represent themselves on continental platforms. South Africa hosts three Pan-African organisations that we may be able to lobby (NEPAD, APRM and the Pan-African Parliament).
- Need to ensure that the public understands our obligations in terms of existing legal instruments.
- Conversations are focused on migrants coming to South Africa and less on how (young, Black) South Africans can migrate to other African countries and be economically successful. For example, Burundi needs skills in certain professions, but South Africans are not going there. Africa has a lot of opportunities and we need a conversation between South African corporates, the Department of Trade and Industry and others that highlights these opportunities.

## **Conclusion**

There was a common understanding among participants that xenophobia is a complex phenomenon that is interlaced with a plethora of structural, socio-economic and political issues, which may require both macro and micro level interventions to effectively address. More importantly, national and regional bodies, including CSOs and business have a key role to play and should be involved in the process of co-creating and supporting implementation of targeted interventions to address xenophobic violence.

Whilst xenophobic violence is found in many countries around the world, the frequency and levels at which it occurs are unique to South Africa. As such, it is crucial, as part of our efforts, that we support positive practices of social cohesion and tolerance by people living together, and channel our individual and collective strengths to any actions we agree on with regards to addressing violence of any kind.

The OSF-SA dialogue was fraught with deep sentiments of shame, anger, and desperation among participants who sought to find solutions to xenophobic violence at the convening. The incoming OSF-SA Executive Director (who closed the dialogue) stated that “there is a sense of a common humanity and the importance of symbiotic relationships had been foregrounded; that the journey would be a long one – a marathon; and we need to take opportunities right now such as the desperation of government to find a solution”. She noted that “collaborative and multifaceted approaches will be crucial in tackling the scourge of xenophobic violence. And we must move beyond rhetoric to action. Although we may not have found too many answers today, some important seeds had been planted.”

Moving forward, the outcomes from the Johannesburg dialogue will be taken to a follow-up meeting in Dakar in November 2019 for further deliberation on how some of the emerging ideas/solutions can be translated to meaningful interventions in the region. OSF-SA will keep grantees and the sector informed about future grant-making opportunities in response to violence, particularly gender-based violence and xenophobia that continue to plague our society.

Annexure: Presentation by Jean Pierre Misago (PhD)