

# REPORT OF THE AD HOC JOINT COMMITTEE ON PROBING VIOLENCE AGAINST FOREIGN NATIONALS, DATED 19 NOVEMBER 2015

## 1. Introduction

The Ad Hoc Joint Committee on Probing Violence Against Foreign Nationals (the Committee) was established by the National Assembly (NA) on 6 May 2015 and by the National Council of Provinces (NCOP) on 7 May 2015 in terms of Joint Rule 142. The Committee consisted of 11 members of the National Assembly and 9 members of the National Council of Provinces as follows:

### National Assembly

Name of Member	Political Party
Ms. NR Bhengu	African National Congress (ANC) Co-Chairperson
Ms. ZS Dabuzana-Dlamini	ANC
Ms. L Dlamini	ANC
Mrs. TE Kenye	ANC
Mr. L Ramatlakane	ANC
Mr. DM Gumede	ANC
Adv. LKB Mpumlwana	ANC
Mr. SC Motau	Democratic Alliance (DA)
Mr. RWT Chance	DA
Mr. MA Mncwango	Inkatha Freedom Party (IFP)
Mr. NLS Kwankwa	United Democratic Movement (UDM)

### National Council of Provinces

Name of Member	Political Party	Province
Mr. TC Motlashuping	ANC - Co-Chairperson	North West
Ms. TK Mampuru	ANC	Limpopo
Ms. GM Manopole	ANC	Northern Cape
Ms. LC Dlamini	ANC	Mpumalanga
Mrs. LL Zwane	ANC	Kwazulu-Natal
Mr. SJ Mohai	ANC	Free State
Ms. T Wana	ANC	Eastern Cape
Mr. ER Makue	ANC	Gauteng
Ms. B Masango	DA	Western Cape

## 2. Terms of Reference

In accordance with the resolutions of the two Houses, the mandate of the Committee is to:

- i. Probe into the incidence of violence against foreign nationals and related matters while incorporating into its work the report and recommendations of the previous Task Team of Members of Parliament Probing Violence and Attacks on Foreign Nationals in 2008.
- ii. Make recommendations where applicable.
- iii. Exercise those powers as set out in Joint Rule 32 that may assist it in carrying out its task.
- iv. Report to the Houses by the end of August (later revised to 20 November 2015).

## 3. Programme of Action adopted by the Ad Hoc Joint Committee

The Committee met at Parliament on 25 June 2015 to discuss its mandate and adopt a programme of action. The Committee was briefed and considered the report and recommendations on the *2008 Task Team of Members of Parliament Probing Violence and Attacks on Foreign Nationals*. This report also dealt with violence against foreign nationals in

the Western Cape and the Committee, thus resolved to meet with stakeholders in the Western Cape.

The Committee conducted oversight visits to affected areas in Kwazulu-Natal (6-8 July), Gauteng (8-11 July) and the Western Cape (4 August) where it met with *inter alia*, the South African Police Service (SAPS), the Offices of the Premier in the three provinces, representatives of foreign nationals, government departments and civil society organisations as well as the Inter Ministerial Committee on Migration established by the Presidency. The Committee called for and considered a number of oral and written submissions from these stakeholders and interested parties.

During its oversight visit of areas in KwaZulu-Natal, the Committee was invited to attend a roundtable discussion at the 37<sup>th</sup> Southern African Development Community (SADC) Parliamentary Forum outside Durban. In this forum, the issue of attacks against foreign nationals was raised from a regional perspective. The main aim of the SADC-PF was to provide a platform for parliaments and parliamentarians to promote and improve regional integration in the SADC region through parliamentary involvement and it is striving towards transformation into a fully-fledged regional Parliament.

The Committee realised that the nature of its work would require a longer period than initially indicated and resolved to request Parliament to extend the deadline for the submission of its report. It submitted a draft interim report at the end of August 2015 to this effect and an extension was granted until the end of September 2015. The Committee was, however, unable to finish its work and report by this date. It was therefore revived by both Houses on 4 November and a report deadline was set for 20 November 2015.

#### **4. Oversight visits**

The Committee conducted oversight visits to affected areas in KwaZulu-Natal and Gauteng from 6 to 11 July 2015 and the Western Cape on 4 August 2015. During its visits to Kwazulu-Natal, Gauteng and the Western Cape, the Committee engaged with a broad range of stakeholders.

##### **4.1 KwaZulu-Natal Oversight**

###### **4.1.1 EThekwini Municipality**

The Committee first engaged with the EThekwini Metropolitan Municipality, which reported that the violence against foreign nationals in the Municipality was first reported on 30 March 2015. The violence was sparked by a labour dispute alleging that foreign nationals were given preference of employment over local employees at Jeena's Warehouse in Isipingo. Incidents of violence then broke out in Malukazi, Umlazi, KwaMakhutha, Chatsworth, Clare Estate/Sydenham, Greenwood Park, Verulam and KwaMashu. Those affected were mainly from the Democratic Republic of Congo (DRC), Zimbabwe, Malawi, Mozambique, Ethiopia and Somalia. South African nationals who rented out their properties to foreign nationals were also affected.

The EThekwini Municipality, together with the KwaZulu-Natal (KZN) Provincial Government responded by establishing three shelters: at Isipingo which took approximately 280 foreign nationals; Chatsworth with 1000 foreign nationals; and Shannon Drive in Greenwood Park with 196 foreign nationals. At the height of the tension, around 9000 persons were being cared for at shelters but no significant health issues were reported. The shelter at Greenwood Park was relocated to Phoenix at Univale Sports due to a large group of people reported to be displaced at the Phoenix Police Station. Most of the people in camps were not directly attacked but sought shelter for fear of further violence. The displaced people were provided with humanitarian services such as food, clothes and medical services supplied by Government

and non-governmental organisations (NGOs). In order to normalise the situation, the South African Police Service (SAPS) presence was increased.

#### **4.1.2 KwaZulu-Natal Provincial Government**

The KZN Provincial Government reported to the Committee that a voluntary repatriation and reintegration process was undertaken. A total of 4014 foreign nationals were repatriated to Malawi, Zimbabwe, Tanzania and Mozambique. There were 1222 immigrants who were reintegrated back into their communities after community engagement and dialogues facilitated by Government.

The Provincial Government added that successful repatriation and reintegration led to the closure of the Phoenix shelter on 29 April 2015 and closure of the Isipingo shelter on 6 May 2015. The Chatsworth shelter remained open for longer with people mainly from Burundi and DRC. Due to the current situation in their countries, they were more in favour of reintegration. The United Nations High Commissioner for Refugees (UNHCR) distributed vouchers to the displaced people at the Chatsworth shelter to assist with reintegration for a period of two months and with the payment of rent and food. Government announced the intention to close the Chatsworth shelter on 30 June 2015. There were some immigrants who opted to be resettled in various provinces such as the Eastern Cape, Western Cape and Gauteng while waiting for the UNHCR to repatriate them to other countries. Those who reintegrated into various wards in Durban did not want to register their location for fear of victimization.

The Provincial Government reported conducting a march against xenophobia. It was reported in the media that the attacks against foreign nationals were sparked by King Zwelithini at Pongola. The centre of the violence, however, was Isipingo, which is approximately 400 kilometres from Pongola, where no violence took place. The King thereafter made another address in Durban urging around 20 000 people against attacking foreign nationals.

The Premier of KZN was reported to have established a Special Reference Group on Migration and Community Integration in KZN. The focus of the Reference Team is to conduct representative consultations, collate submissions and recommendations on the recent attacks and to advise the Premier on the potential for joint implementation of programmatic responses to the prevailing situation. The Reference Group's final report was due on 31 October 2015 but had not been made public at the time of completing this report.

#### **4.1.3 Department of Home Affairs (DHA)**

The DHA in KZN reported that their role at the shelters was to register and verify the status of each person. Undocumented persons were encouraged to make use of the voluntary repatriation process. The DHA liaised with Embassies and Consulates on the removal of persons who wished to be repatriated. The biometric details of all undocumented migrants were taken and of those people who had lost their documentation, had them replaced.

The DHA also indicated that changes in legislation were aligned with international standards, which, although challenging, had shown improvements in implementation. Extensive surveys of border areas and on the causes of migration continued to be conducted. This resulted in recommendations to consider ways of formalising informal crossings for persons with permits valid and within a particular radius of the borderline. These areas would be policed by the communities themselves (who would lose this privilege if it was abused).

#### **4.1.4 Durban Chamber of Commerce (DCOC)**

The DCOC and Industry reported that they deplored the attacks against foreign nationals. This had impacted on the tourism industry in the province, resulting in an estimated 70 percent cancellation in hotel bookings, especially by tourists from the European Union and China. An

international Methodist Church conference was cancelled and there had been a significant impact on inner city businesses.

The DCOC indicated that it took the lead in making several statements condemning violence and helped coordinate donation support to shelters such as food, clothes and support for women. A planning Imbizo was also held to address shortfalls in the informal trading economy. The informal economy consisted largely of low profit goods, however, there was high competition. As a result the DCOC was expanding initiatives in the province to support small businesses.

The use of generalised terminology such as xenophobia may have increased the negative impact on tourism after the violence since it implied a broadly prevalent prejudice and violence. The DCOC was asked to provide information to the Committee on labour and dispute resolution as well as information on the relationship between small businesses and large businesses.

DCOC indicated that businesses in South Africa need to be competitive on a global as well as a local scale. Labour costs in the country are known to be comparatively high and with relatively low productivity. The Chamber was consulting with businesses, including small business on how to improve productivity. The informal business sector is, however, the new norm; which made formal interventions as well as identification of what triggered violence in the sector more difficult.

#### **4.1.5 House of Traditional Leaders (HTL)**

Provincial representatives of the House of Traditional Leaders (HTL) engaged with the Committee indicating that they did not agree with the attacks and confirmed that the province needed peace and unity. There were, however, no attacks on foreign nationals in rural areas. It was reported that the NHTL worked closely with the municipalities and that in rural areas there were no problems with foreign nationals. If a foreign national wanted to open a business, an agreement was reached between the owner of the property and the foreign national. Foreign nationals were introduced to how the locals live through structures such as the traditional councils.

According to the HTL, the entry point into the rural areas were via the Induna and a community meeting would be called when a person was allocated a site. The foreign nationals were then part of the community and they abided by the norms and culture. The terms of the contract between the local and the foreign nationals were known to the community. It was, however, reported that the borders were not managed properly. It was reiterated that after the attacks, the King held an Imbizo and called for peace and for the Zulus to protect the foreign nationals. In the past there had been factional wars and political violence and the King had always preached in favour of peace.

#### **4.1.6 KZN Special Reference Group on Migration and Community Integration (SRG)**

Subsequent to the outbreak of violence in KZN, the Committee was informed that the Premier of the Province established the SRG to conduct representative consultations, collate submissions and recommendations on recent attacks and to advise the Premier on the potential for joint implementation of programmatic responses to the prevailing situation. The SRG was comprised of seven experienced independent professionals and Chaired by Judge N. Pillay. The SRG indicated that their functions included to:

- undertake a comprehensive assessment of the reported causes of socio-economic impact associated with the attacks
- undertake an assessment and consideration of the successes and shortcomings of past and ongoing initiatives and recommendations if any

- facilitate inter- and extra-governmental consultations by soliciting proposals and submissions from affected and interested parties and communities and to outline immediate and long-term solutions in response to violent incidents.

The SRG had engagement with a broad range of stakeholders through focus groups, consultations, interviews, fact finding missions, site visits, written submissions and internal meetings. Areas covered at the time of briefing the Committee were: eThekweni, KwaDukuza, KwaDambuza, uMgungundlovu, Amajuba and uMzinyathi.

Some of the issues encountered by the SRG were: the need for better implementation and formulation of a migration policy; a rise in competition for scarce resources; the presence of negative perceptions, prejudices and stereotypes; criminality; opportunistic violence and crime; unreconciled trauma and legacies of violence; a gap in the comprehensive response strategy in advance of the outbreak of violence and a lack of integration between foreign nationals and local communities.

The final report of the SRG was due for submission to the Premier by the end of October 2015 and the Committee requested that it be submitted to Parliament once it was available.

#### **4.1.7 Council of Churches, Red Cross International and Alindad Foundation Disaster Response**

The Committee received briefings by three organisations assisting migrants in the aftermath of the violence. The Council of Churches (CoC) in KZN indicated that on 6 April after initial reports of violence, they mobilised ministers to conduct pastoral visits to the shelters to offer spiritual support. They discovered that four immigrant leaders had been abducted in Umlazi and they assisted in their release. Food, clothing and blankets and other aid from churches and NGOs were provided to those seeking refuge in shelters. The CoC participated in protests and in a provincial march against xenophobia. They also provided opportunities for psycho-social counselling and would be assisting in creating community dialogue.

Red Cross International (RCI) indicated that they had ensured hygiene in shelters and provided psycho-social support, food and support for young children. RCI were on site around the clock at all shelters since the attacks had started in Isipingo. Funding for food had run out, however, assistance was provided by religious groups and local communities. Local Voluntary Medical Response had also assisted for 45 days with various minor health issues in the Chatsworth shelter.

Alindad Foundation Disaster Response (international) which has, for many years, been a member of the provincial disaster response was activated to assist on 29 March. Foreign nationals found outside police stations were provided immediate food support and in consultation with the KZN Members of the Executive Council (MEC) were then moved to tented camps erected in Isipingo and Phoenix. Blankets and mattresses were provided and the camps grew over time to around 3000 migrants. Local communities had also organised their own programme to feed migrants for around 25 days. It was indicated that better trained camp and disaster management personnel were needed to coordinate food donation and disaster response communication with NGOs on assistance needed.

#### **4.1.8 Umlazi Police Station**

The Umlazi Police Station confirmed to the Committee that the workers at Jeena's Warehouse in Isipingo were engaged in a labour dispute which started in November 2014. The workers were represented by the Professional Transport and Allied Workers Union (PTAWU) and the matter ended at the Commission for Conciliation, Mediation and Arbitration (CCMA). It was reported that 27 permanent workers and 30 casual workers had stayed away from work. The

management of Jeena's Warehouse then employed casual workers in place of the striking workers.

Umlazi SAPS reported that on 30 March 2015, the striking workers and community members barricaded the Prince Mcwayizeni Road near Jeena's Warehouse. The South African National Civic Organisation (SANCO) leadership including the KZN Provincial Secretary, and Umlazi Chairperson were among the demonstrators at the store. SANCO distributed SANCO T-shirts to demonstrators. While the police were focused on the demonstrators, there were reports that foreign nationals were being assaulted in their rented residential homes at Emalandeni Informal Settlement.

SAPS further reported that there was a group of suspected South African males who were targeting foreign nationals in Isipingo Central Business District (CBD). The suspects looted shops and salons owned by foreign nationals. Some of the foreign nationals who were targeted ran to a rented house near Folweni Taxi Rank where they retaliated by throwing stones back at the assailants. The stones thrown by foreign nationals damaged five taxis. The Folweni taxi drivers and conductors joined in throwing stones at the foreign nationals and vehicles that were parked in the yard of the house occupied by the foreign nationals were damaged. It was reported that three foreign nationals sustained injuries. An unidentified vehicle drove past the house and shots were fired towards the house but nobody was injured.

SAPS reported that a group of 120 foreign nationals ran to the police station while police were busy at Isipingo CBD. The police escorted some foreign nationals from the CBD to Isipingo Police Station and some of them fled there on their own. The Isipingo Police Station sheltered 300 foreign nationals overnight due to claims that they feared for their safety in residential areas.

SAPS reported that on 31 March 2015 workers continued to strike outside Jeena's Warehouse. The police received information that the protesting workers were responsible for attacking foreign nationals on 30 March 2015. SAPS reported that on the same day the KZN MEC for Transport, Community Safety and Liaison and the EThekweni Municipality Mayor visited Isipingo Police Station to address the issue of displaced foreign nationals. A decision was taken to place the foreign nationals at a temporary shelter at Isipingo Soccer Fields and later at the Chatsworth Shelter.

The Umlazi SAPS Cluster Commander and the SANCO Provincial Secretary were consulted and the following was established:

- i. The protest action at Jeena's Warehouse was organised by SANCO in support of the striking workers and not the PTAWU. However, SANCO stated that it was a coincidence that their protest action at the store in support of the striking workers coincided with the attacks against foreign nationals. SANCO declared that it was against the attack.
- ii. The workers at Jeena's Warehouse were fighting for registration as full time employees. There were workers who had worked at the store for 18 years but were still employed as casuals.
- iii. The workers approached SANCO for their assistance and SANCO wrote a letter to Jeena Warehouse management requesting a meeting, but the management refused to honour SANCO's request. SANCO then mobilised community members to support the striking workers.
- iv. It was alleged that South Africans who were unable to speak and understand English were reported to have been replaced with foreign nationals.
- v. The police were not able to establish if any foreign nationals were working at Jeena's Warehouse. The Department of Labour visited the store prior to the incident of 30 March 2015 but could not find proof that foreign nationals were working there.
- vi. SANCO alleged that on 30 March 2015, protesters spotted a foreign national standing next to Jeena's Warehouse with South African Identity Documents.

- vii. According to SANCO, a fraudulent ID that was dropped by a foreign national was the trigger of the violence at Jeena's Warehouse, which occurred at the same time that a labour dispute was taking place at the Store. A group of about 30 protestors chased this foreign national towards the Isipingo CBD. The person who had the alleged fraudulent ID was not arrested. SANCO further reported that there is a Caltex garage in Isipingo which had replaced all South Africans with foreign nationals. The foreign nationals were paid R300 per week instead of R2000 per week that should be paid to locals. The police could not verify the allegations of the ID books.
- viii. The Umlazi police believed that the following could have led to the violence:
- Animosity between some South Africans and foreign nationals relating to business competition.
  - The shooting of Ms. A. Dlamini by a foreign national.
  - Criminality on the part of South Africans.
  - Allegations that foreign nationals are dealing drugs, and buying and selling stolen goods.
  - Allegations that foreign nationals were taking jobs from South Africans.
  - The coverage of incidents of violence against foreign nationals by print and visual media spreading violence to other areas.

SAPS reported that on 9 April 2015, a group of unknown African males entered a Somali shop at J Section in Umlazi and tried to loot it. They ran out of the shop without taking anything, when they saw the shop owner wielding a firearm. The shop owner fired a shot towards a group of males that were on the pavement in front of his shop. A 24 year old South African female, Ms. A. Dlamini was mistakenly shot and later died in hospital. This incident led to the escalation of incidents of attacks on foreign nationals' shops and houses at Umlazi Township and other areas. The case of the accused Somali went to court on 23 June 2015. The police could, however, not find the firearm.

SAPS further reported that on 10 April 2015 a group of about 50 African males armed with spears came to a tuck-shop in a container at Umlazi and demanded that the Ethiopian owners open it. The suspects then poured a flammable substance through the serving window and set it alight. There were two Ethiopian nationals in the shop who were badly burnt and rushed to hospital, one of whom later died.

#### **4.1.9 KZN SANCO**

The provincial SANCO presented to the Committee and put forward the following recommendations based on the matters reported by the police above and its engagement with affected communities:

- i. Government should address the matter of migration policy and there should be proper registration of foreign nationals in the country.
- ii. Refugees and their businesses were fine, however, they should be encouraged to share business knowledge and to have licences.
- iii. The issue of certain businesses fronting for other people and the matter of fraudulent marriages and fake IDs should be investigated.
- iv. A lasting solution should be found so that violence does not reoccur again.
- v. There should be proper registration of all who enter the country and refugee camps established for all political refugees.
- vi. Tuck-shops run by foreign nationals should be investigated since they may in fact be owned by big businesses.

#### **4.1.10 Jeena Warehouse Management, Isipingo**

The Committee visited Jeena's Warehouse. The Committee engaged with store management who indicated that the store had been in existence for 120 years. They confirmed that there

was a labour dispute but that all its employees were officially registered. There were, however, some community members who were given casual work. According to the management, the store did not replace South Africans with foreign nationals. During the strike, which started on 15 December 2014, the store had a skeleton staff. The dispute with PTAWU was reported to have underwent mediation on 17 June 2015 and the Union Representative, Mr. M. Jama, was supposed to participate in the hearing on 23 June 2015 but did not attend. Jeena's Warehouse management emphasised that the attack against foreign nationals did not emanate from their store.

#### **4.1.11 Foreign nationals and business owners in Isipingo Central Business District**

The Committee proceeded to Isipingo Central Business District and interacted with foreign nationals and business owners who alleged that the violence was started by young boys, but it was difficult to identify them. It was established that most of the foreign nationals residing in the area were from the Democratic Republic of Congo (DRC), Burundi, Rwanda, Zimbabwe, Malawi, Somalia and Nigeria. Mr. Daniel from the DRC indicated most of the foreign nationals had started as car guards and worked their way up to owning shops.

The following concerns were raised:

- i. The DHA was not processing documents on time. There were people who had been in the country for more than 10 years and still did not have refugee documents, let alone permanent residence.
- ii. The relationship between the police and foreign nationals was not good. It was reported that the police did nothing when the looting took place.
- iii. There was no dialogue between South Africans and foreign nationals.
- iv. The municipality did not seem to give trading permits to South Africans.

#### **4.1.12 Phoenix Police Station**

At Phoenix Police Station it was reported that the attacks against foreign nationals occurred in Durban. The foreign nationals residing in areas around Phoenix came to Phoenix Police Station on 14 April 2015, indicating that they feared for their lives and that the Greenwood Park shelter was already full. The Phoenix Police Station housed them temporarily in the holding cells, although there were no attacks against foreign nationals in the area. A new shelter was established at Univale grounds in consultation with the EThekweni Municipality on 17 April 2015. It was also known as the Phoenix Shelter. The shelter had been used for the Northern part of Durban and it sheltered approximately 3222 persons. Others came at night to sleep. It was also reported that approximately 700 foreign nationals residing in the Verulam area left their homes and went to Verulam Police Station. During their absence, their homes were broken into and one was set alight.

SAPS reported that repatriation and integration took place from 20 April 2015 to 28 April 2015. The shelter was closed on 29 April 2015. It came to the attention of the police and the EThekweni Municipality that some foreign nationals, coming from various parts of Durban, sought refuge at Akoonjee Brothers' Warehouse. These were mainly Somalian and Ethiopian nationals. They were displaced from Inanda Cluster, KwaDukuza, Umlazi and Clermont. All these foreign nationals owned business and they moved with their goods.

#### **4.1.13 Interaction with Migrants and Locals in Durban CBD**

The Committee proceeded to several streets in the Durban CBD that were known to house migrant businesses and accommodation. One street was dominated by Pakistani nationals, another was dominated by Somalis and those from DRC and Nigeria. They indicated that they were not attacked in these areas since they comprised most of the inhabitants or businesses there and South Africans would not risk being outnumbered. Some business persons indicated they have access to direct container shipments of goods from abroad and thus were able to

offer better prices. There was one shop which was found to be a hair salon in front and appeared to be a brothel and accommodation above it. Most migrants, however, indicated that they wanted to work with South Africans.

Migrants that have travelled for long distances, particularly by road, may be particularly vulnerable to health issues that need attention in areas with high migrant populations.

A crèche in the inner city indicated that they found it difficult to be registered and get materials to cater for the needs of children.

#### **4.1.14 KwaZulu-Natal Somali Community Council (KSCC)**

At the KwaMashu Police Station the Committee met with the KwaZulu-Natal Somali Community Council (KSCC). They reported that there was a KwaMashu Business Association who was distributing pamphlets warning foreign nationals to leave the area. During the attacks on foreign nationals in KwaMashu, there was no loss of life but a lot of store merchandise was lost. They confirmed that they had partnerships with South African businesses who helped them store their goods during the violence. They indicated that this was not xenophobia as was reported but rather acts of criminality. It was reported that the community of KwaMashu did not have a problem with foreign nationals. It seemed that there was a group that was well organised to intimidate and attack foreign nationals. There had been petrol bombing and no arrests. The KSCC thanked the South African government for hosting them in South Africa. They emphasised that they did not sell drugs and were willing to share their experiences. They indicated that there were no secrets to building a business. They indicated that the relationship between Akoojee Brothers' Warehouse and the migrants that they sheltered was for business and not based on religion.

#### **4.1.15 North Region Spaza Association**

The North Region Spaza Association reported to the Committee that the area was too small to conduct business along with foreign nationals. They reported that they could not compete with foreign nationals who had better business support networks. The foreign nationals who were conducting businesses in South Africa appeared to be deployed in a coordinated manner and they slept in their shops. The Spaza Association raised the following challenges:

- i. Foreign nationals did not consult with local shop owners when they decide to open a shop and they were reported to also create competition by marrying South African women.
- ii. The competition was aggravated by the fact that malls were mushrooming in the townships, also without consultation.
- iii. Small businesses do not receive enough support from the South African government to survive and by-laws relating to businesses were not enforced.

## **4.2 Gauteng Oversight**

### **4.2.1 Gauteng Provincial Government**

The Committee engaged with the Acting Premier of Gauteng who was accompanied by a delegation including the Director General of the Department of Cooperative Government and Traditional Affairs (COGTA). The Premier reported that Gauteng's cosmopolitan nature reflects a myriad of communities, languages, cultures and nationalities. Gauteng remains the largest economy in South Africa and thus experiences high levels of in-migration from other provinces and cross border migration. The Gauteng City Region Observatory research survey indicated that there were approximately one million international migrants in Gauteng and 67% of them were from the Southern Development Community (SADC) states. Gauteng was both a transition point for those intending to move to other parts of the country and a reception area for those seeking to settle. The Provincial Government's posture on migration was therefore

rooted in balancing its statutory, legal and regulatory position as an organ of the state and the socio-economic realities which attract and entrench both internal and cross-border migrants.

The migration situation is amplified by the complex challenges of:

- i. Inequality, poverty and unemployment;
- ii. Rapid urbanisation in relation to land use planning and management;
- iii. Pressure on basic services and amenities;
- iv. Uneven enforcement of regulatory compliance; and
- v. No ongoing social cohesion programme, following the 2008 xenophobic attacks.

The Committee was informed that on 19 January 2015, violence was sparked by the fatal shooting of a 14 year old boy in the Snake Park Region who allegedly stole some items and was assaulted by shop owners and subsequently died due to the sustained injuries. This resulted in looting and targeting of other foreign national shops by the community. By 22 January 2015, violence had spread to other areas like Braamfischer.

On 20 January 2015, a Ward Councilor convened a public meeting in the Doornkop community. On 23 January 2015, the Premier, Mayor and other leaders visited Soweto, Diepkloof, Naledi, Protea South, Meadowlands and Snake Park to assess the situation and address members of the community about the criminal activities that were taking place against foreign nationals' shops. On 25 January 2015, two South Africans were shot dead at Zamimpilo informal settlement allegedly in a looting attempt at a Somalian shop. The outbreak of attacks in the inner city spread to Alexandra by 17 April 2015, including the fatality of a Mozambican national on 18 April 2015. Incidents in January 2015 were different from the 2008 violence in that violence was focused mostly on businesses rather than on people.

The outbreaks of violence were preceded by false alarms about xenophobic attacks which spread fear. These messages were went viral through social media. Incidents of violence included the targeting of foreign national owned shops. Soldiers were deployed to the City of Johannesburg on 21 April 2015 and tensions subsided. The City was engaged in mobilisation and activation of structures working with migrants for a proactive response. These include the Johannesburg Migration Advisory Panel and the Johannesburg Migration Council, which also includes city leadership actively involved in the community activities. Private sector engagement and mobilisation was undertaken with Vodacom to set up a distress service.

The Provincial Disaster Management Centre (PDMC) assessed affected municipalities and found certain areas worst affected by violence and in various degrees at risk of violence. In the City of Johannesburg, municipal Joint Operation Centres were set up in Cleveland and Sandton and 24 hour Disaster Management Centres were activated. Overnight shelters in Alexandra and Jeppestown were monitored and safety patrollers and SAPS support were activated.

In the city of Ekurhuleni temporary camp shelters were activated in tents and halls in Primrose and Elsburg with support material provided including mattresses, blankets, clothes, food, basic sanitation and toiletries. Transportation, water provision, waste management and other camp management activities were also coordinated.

The PDMC coordinated all municipal responses to violence incidences through Joint Operation Centres (JOCs) and Provincial Joints. Land and recreational facilities were identified for possible provision of large shelters/displacement camps. The PDMC liaised with UNHCR and UN Human Rights Council, which provided 100 tents. Seven shelters were established housing 2250 persons.

The office of the Premier activated advocacy and civic information campaigns across the province and coordinated efforts with municipalities, civil society organisations, including

organised migrant communities and migrant organisations as well as with the support of faith-based organisations. Programmes from all municipalities, provincial departments, civil society organisations and faith-based organisations were integrated, culminating in a *People's March Against Xenophobia* on 23 April 2015 where more than 20 000 people participated in united condemnation of xenophobia.

An Interfaith Prayer Day was reported to have taken place on 24 May 2015 praying for cohesion and solidarity with the victims of violence. The ongoing social cohesion programme includes language support and orientation for new arrivals as well as workshops and training on building communities of peace and diversity; intercultural and counter xenophobia dialogues; human rights and the risks of human trafficking.

#### **4.2.2 Gauteng Provincial Government Current and planned institutional arrangements**

Current and planned institutional arrangements in Gauteng in support of migration and social cohesion include the following:

- i. The City of Johannesburg Migration Desk is a hub that provides multi-media information on the province and facilitates connection to various resources critical to migrant adaptation in the province. The Migrant Desk is for all people that are new to the province but not many South Africans have visited the Desk. Advocacy groups, on the other hand, organise migrants to go to the Desk. They only provide information, however, and advise illegal immigrants how to regularise. Migrants from other countries have more success in integrating since they are well-travelled, whereas those migrating from within the country tend to be more overwhelmed by the challenges facing them when they arrive.
- ii. Arrangements are underway for the setting up of the Provincial Migration Desk responsible for integrated policy coordination. Suggestions on the establishment of Migration Help Desks in the Cities of Tshwane and Ekurhuleni are being reviewed.
- iii. A War Room was established as a cohesive and integrated network of service response structures from ward to local, to district and provincial level. It develops and implements a province-wide, integrated, comprehensive and sustainable service delivery model to improve the quality of life of Gauteng residents, particularly the poor.
- iv. The PDMC is responsible for coordinating government's response to disaster-hit areas across the province, working with other relevant structures in government as well as non-governmental organisations. All municipalities are represented and participate.
- v. The African Peer Review Mechanism (APRM) is a broad consultative forum with influence on provincial policy. Departments of COGTA; Human Settlements; Sport, Arts, Culture and Recreation are requested to form part of the team that will support the APRM and the Social Cluster in the development of the social cohesion strategy and interventions.
- vi. Community Police Relations within the Directorate of Community Safety (DCS) advocates and mobilises communities against crime. The DCS also coordinates advocacy programmes with law enforcement structures in the province.
- vii. The United Nations Protection Working Group was set up to deal with the influx of Zimbabwean nationals and it deals with matters of xenophobia in South Africa. Provincial and local governments are not represented. It is proposed that these two spheres of government should be represented.
- viii. A Reception and Integration strategy will enable new comers and established migrants to have an avenue to receive information and connect to opportunities that will allow participation in the active lives of communities. This includes the help desk, language classes and orientation to assist migrants to understand the culture of the host country, duties, rights and obligations and knowledge of the law emphasising zero tolerance to crime.
- ix. Promoting participation of migrants in the decision-making process and community activities, for example in school governing bodies, police forums, business forums, etc. Further research is to be conducted on racism, migration, xenophobia, social cohesion and integration.

The Gauteng Province indicated to the Committee that Home Affairs were part of a team operating in camps taking details, including document status and information on undocumented migrants. The shelters were closed relatively quickly but in total the seven camps had a direct cost of R5.3 million for humanitarian assistance. In total 279 people were repatriated and 306 returned to communities. It was reported that a South African drug addict had been implicated in stealing and when attacked had spurred further violence. Opportunistic crime and looting occurred but significantly less than in 2008 due to rapid and coordinated intervention. The experience with the media was positive such as with the “not in my name” campaign.

#### **4.2.3 Public meeting in City of Johannesburg Municipality**

The Committee attended a gathering arranged for stakeholders and those affected by the violence. The following organisations interacted with the Committee and their submissions are summarised below.

##### **4.2.3.1 African Diaspora Forum**

The African Diaspora Forum quoted several statements from prominent figures that fed into discrimination against migrants. They indicated that they were struggling to renew asylum permits on a monthly basis since they often struggle to even enter DHA offices let alone get legal permits. There was, however, also an indication that it was the failure of governments in refugee countries of origin to take effective action to prevent conflict and have effective freedom of speech and franchise, which contributed to war in African states and increased migration into South Africa. In South Africa there is the freedom of political expression that they lacked at home and the presence of the Committee testified to this and was appreciated. Broader diplomatic interventions on the continent were needed to address the root causes of violence against foreign nationals.

##### **4.2.3.2 Consortium for Refugees and Migrants in South Africa (CORMSA)**

The CORMSA indicated in addition to its written submission to the Committee that civil society was getting support from provincial government and the Migrant Desk. They were disappointed that after the IMC on Migration was established, Operation Fiela resorted to the disturbing inclusion of the military. CORMSA complained to the Premier about the wrong message being sent that the attacks on foreign nationals had only led to the arrest of foreign nationals. It took Lawyers for Human Rights three court orders to get legal access to migrants that were detained for deportation, which contradicted the Minister of Home Affairs saying the country was taking a developmental approach to migration.

##### **4.2.3.3 South African Masters and Legends Association (SAMLA)**

SAMLA was a new initiative of former professional soccer players and celebrities aimed at using sport for awareness and education initiatives. SAMLA indicated that decision-making processes needed to be informed by migrants (such as a presidential advisor on xenophobia and racism). Ongoing engagement with high profile figures was also needed, requesting support for ventures such as the soccer matches and discussion road shows they arranged between migrants and citizens. The South African Football Association (SAFA) is refusing support perhaps due to the African Diaspora Forum being part of SAMLA.

##### **4.2.3.4 Lawyers for Human Rights (LHR)**

LHR indicated that numerous research had shown that violence was specifically targeted at migrants from outside South Africa over the last 15 years. What had not improved since 2008 was how badly victims were treated. They also raised a concern with Operation Fiela which used soldiers to do inspections without warrants on private property when they were not properly trained to do policing and deter violence. Operation Fiela was strengthening the association of migrants with crime and there was a targeting of even those that had legitimate permits.

Being able to work was a matter of human dignity and survival for migrants in South Africa. There were also significant delays in the procedures related to the arrests of those apprehended for violence against migrants with only a 16% prosecution rate. Minister Radebe was reported to have said that of the 5000 arrested, only 79 were prosecuted. The publicly announced specialised migration courts have not been put into effect. Those who were undocumented were not undocumented by choice but by lack of access.

A lot of research had been done on the existence of xenophobia which could not be countered by anecdotal experiences. The LHR indicated that the dictionary definition of xenophobia was not sufficient to address the real prejudice existing all over the world against migrants - and in many instances South African government departments are not following the law and the Constitution regarding migrants. LHR regard Operation Fiela as a repeat of the abusive process in a 2008 case where 400 people were threatened with deportation and families were separated.

#### **4.2.3.5 South African Congress of Non Profit Organisations (SACONO)**

SACONO were thankful to the Premier for the interventions, especially the coordination of support. They indicated that more was needed to align the United Nations, African Union and local laws on refugees. Undocumented migrants and refugees were all seeking opportunities but could not find more durable livelihoods since their temporary permits were not being finalised. NGOs as a sector were quite fragmented and could better assist with integration if they were better coordinated. Some issues could be dealt with at street level where migrant skills could also be of use, such as improved sharing of culture such as food.

#### **4.2.3.6 South African Spaza and Tuck-shop Association (SASTA)**

SASTA indicated that they sought government support since they were still struggling to survive. They had received some support from Massmart. Only 10 out of 6000 small businesses were given grants to establish a business under the Gauteng Accelerator Programme (GAP).

Small businesses indicated that they had no evidence of government initiatives to support business and create jobs and claimed that 80% of goods in malls were from China. It was alleged that video footage was available of people paying to get business operating permits. It was further alleged that Municipalities were incompetent and permitting needed to be more centralised. Many businesses such as those situated in residential homes were not compliant with municipal by-laws and too many licenses were issued in one area. There were also claims that foreign nationals only employ and support their own people.

It was further indicated that there was a need to develop support to train businesses in order to access the National Youth Development Fund. There was much more needed for training on such matters as cooperating to bulk buy goods. It was, however, unfair for one person to receive funding from several bodies at the expense of others.

#### **4.2.3.7 Rights and Equality for Rwandans**

The Rights and Equality for Rwandans indicated that they did not think that the recent attacks were outright xenophobia related. The deeper underlying frustrations of those from Rwanda, Burundi and DRC was that they had no space to express themselves in their home countries, which they regard as totalitarian regimes. This was disputed by a migrant from DRC. The Rwandans asked for more diplomatic interventions by South Africa to confront lack of democracy elsewhere on the continent.

#### **4.2.3.8 Johannesburg Migrant Advisory Panel**

The Christians for Peace in Africa as members of the Johannesburg Migrant Advisory Panel indicated that it was one of the structures to engage with migrant communities since 2009 and had consulted directly with President Jacob Zuma. They indicated that the City had been more

proactive than reactive and had spent days and nights in Soweto with victims. They led interfaith prayer for peace and compassion for those with even worse suffering. They believed that the identity as Africans together would solve the problems of migration.

#### **4.2.3.9 Coordinating Body of the Refugee and Migrant Communities**

The Coordinating Body of the Refugee and Migrant Communities requested that as the Committee probed violence against foreign nationals, it should also enquire into institutionalised prejudice and consider a continued structure probing violence since an Ad Hoc Committee was not sufficient to implement recommendations. There was also a need for a better orientation programme by local municipalities, including an updated booklet of information for migrants. The DHA needed better processes to document migrants, not only for them to access services and documents but also to track criminals.

#### **4.2.3.10 Faith Based Organisations**

Faith Based Organisations commended the City of Johannesburg for their work in relation to migrants but more was needed for the unemployed underactive youth who were at a real risk of being exposed to violence. Improving initiatives such as street committees would also prevent violence. The church was a place of safety that offers social services that can further be shared with government.

#### **4.2.3.11 Township Business Development Board**

The Township Business Development Board indicated that they offer a business development and entrepreneurship programme for six weeks and then possible funding based on a business plan. South Africa needs food security and businesses orientated towards this. Institutional prejudice has prevented access to rights of migrants guaranteed in the Constitution. It was reported that around 70 000 Somalis are in South Africa, some having arrived as early as 1890. They are employed in many fields, but most of them are entrepreneurs in townships. There are daily reports of attacks and around 100 Somalis alone die a year due to violence in South Africa. Prosecution was also reported as very low with conviction rates of less than 10%. Some communities, such as Soweto were safer for foreign nationals than others such as Atteridgeville or Duduzo where there have been no migrant owned shops for several years.

#### **4.2.3.12 Community Development Forum**

The Community Development Forum indicated that in 2008 they were involved in education to prevent xenophobia and afrophobia. They indicated that more was needed to teach people of the danger of violence and that no country allows free access across borders.

#### **4.2.4 Jeppe Street Police Station**

The Committee received briefings from the Police in Jeppe Street, Dobsonville and Alexandra Police Stations as well as from Kagiso SAPS and Izinduna.

The Committee was informed that the Jeppe Street policing precinct is comprised of 194 informal businesses, including spaza shops and panel beaters. Eighty percent of these spaza shops and panel beater shops were operated by foreign nationals. On 13 April 2015, the Station Commander received information from the members of the community that there was going to be attacks on foreign shops on 14 April 2015. A contingency plan was put in place to patrol the area.

The Committee was informed that on 15 April 2015, violence broke out in Jeppetown. The first incident started in front of the Jeppe Men's hostel. A group of African males, of different ages allegedly stormed into the street and started throwing stones at the passing cars. They were joined by a large number of people coming from the Jeppe hostel as well as the sub-hostels around the area. Later in the afternoon of the same day, a large group of people moved up the road into Jeppetown and started damaging business premises in the area.

Reinforcements from the Public Order Police was called and the situation was brought under control. The group demanded that foreign nationals must go back to their country of origin or they would burn their shops. Members of the community barricaded the roads with rocks and burning tyres.

The attacks spread all over the area of Jeppestown. Although members of the Public Order Police maintained their presence in the area, more reinforcements had to be deployed, informed by the pace at which the attacks were spreading and the matter was escalated to the Provincial office. The unrest lasted for 11 days, until 26 April 2015. It was reported that although the violence was directed towards the property of foreign nationals, the properties of South African citizens were also targeted. These were clearly opportunistic criminal activities. Derelict buildings that were owned and occupied by foreign nationals were not properly managed, thus contributing to criminal activities. There were no foreign nationals that were displaced, nor needing reintegration during that period.

A total number of 28 criminal cases were registered in relation to that unrest. Thirteen cases were successfully placed on the court roll. The other 10 cases were closed as undetected. Forty-nine people were arrested for criminal related cases. Four cases were still on the court roll and only one was finalised with a conviction.

#### **4.2.5 Moroka Police Station**

The Moroka Police station covering the Dobsonville policing precinct area is comprised of 327 informal businesses, commonly known as spaza shops. The majority of these spaza shops were operated by foreign nationals. It was reported that on 19 January 2015, at about 20:00, violence broke out in Thulani prompted by an incident that occurred at the Raso Supermarket.

A total number of 86 criminal cases were registered in relation to that unrest and 38 persons were arrested. The attacks focused on property not on individuals. There also appeared to be conflict between nationals from different countries where only certain nationalities were targeted at certain times. Twelve cases were successfully placed on the court roll. The other 74 cases were closed as undetected. Seven people were arrested for public violence-related cases. Eight firearms were confiscated and nine foreign nationals were arrested. There was also an indication that there had been a rise in counterfeit goods in the precinct. Four cases were still on the court roll and the other four were finalised with convictions. During the policing of this unrest situation it was noticed that in all businesses that were attacked, the people were not targeted, but the property was. In other instances business operators who were afraid that their businesses might be attacked decided to report to the police before such attacks could take place and requested police to escort them out of the area to different destinations.

#### **4.2.6 Izinduna**

The Committee also had an engagement with Izinduna at Jeppestown Police Station and Alexandra Police Station where the traditional leaders indicated that the local industry did not employ South Africans living in the hostels in town. It was also reported that the unemployed locals was envious of foreign nationals with panel beating skills. It was relayed that attacks in Jeppestown had been managed well since foreign nationals employ South African workers. The Izinduna questioned the presence of the Committee only once migrants experienced problems. Izinduna indicated that when they were in exile they were not allowed to be employed or engage in business and yet refugees in South Africa are.

There was a strong need for more jobs and improved peace and stability. The Committee was informed that the SAPS raid the hostels as if they were criminals and animals and leaders were not engaged. Yet they assist the station to apprehend those that were sought. It was reported that King Zwelithini did not call for violence, it was the law that undocumented

persons be sent back home. They have done everything in their power to protect migrants, but the situation was abused by criminal elements. Izinduna indicated that the attacks were not primarily xenophobic since South African's were also attacked. They however complained how Operation Fiela had raided the hostel and disregarded the dignity of people by forcing them lie naked on the floor whilst the hostel was being searched.

The Izinduna indicated that in exile, South Africans did not take over areas and informal trading like migrants do in South Africa. There appeared to be collusion between some property owners and migrants to rent out or occupy derelict buildings for work or residence. There was also a concern that migrants were abusing other migrants for sex trafficking in buildings which were not raided by police. Locals find it difficult to engage with groups with no leaders who do as they please. They have money to buy and stock to sell whereas even educated South Africans cannot get jobs. They requested that their concerns be taken to higher structures. The work they do was voluntary but they were accused of being traitors since they prevent locals from chasing foreign nationals away.

The Committee expressed appreciation for the way the Induna volunteered and worked with police. It was indicated that there was supposed to be communication with the head of Induna and COGTA on arrangements for paying them.

#### **4.2.7 Snake Park and Kagiso Community Meeting**

Amongst several other issues indicated to the Committee, members of the community indicated that drug addicts were using a sports field since the solid wall around the park prevented them from being observed. The drug users contributed to crime in the area. Sport activities were needed to keep the youth occupied and this would help prevent crime and attacks.

#### **4.2.8 Alexandra Police Station**

In addition to many similar challenges and finding raised by other Police Stations, Alexandra indicated to the Committee that an incident attributed as xenophobia was in fact an internal dispute amongst migrants. There was also tension between foreign nationals and internal migrants over access to housing. It was indicated that improved communication between police and communities is needed to prevent future violence and allow a more rapid response when it does occur.

### **4.3 Western Cape Oversight**

The Committee conducted a public meeting in Hangberg, Hout Bay in the Western Cape. The local SAPS and the Agency for Refugee Education, Skills Training & Advocacy (ARESTA) made the presentations followed by community submissions. It was indicated that there were no recent attacks against foreign nationals in the Western Cape and that the last such attack in the area was in 2011.

#### **4.3.1 Provincial South African Police Service**

The SAPS indicated that the high unemployment rate was the root cause of violence in South Africa. There were limited work opportunities for South African citizens. The employers preferred to hire foreign nationals at low salaries. South Africa was rapidly becoming urbanised. People migrate from rural to urban areas in search of better opportunities. As a result, there was a shortage of housing. The foreign nationals compete with South African citizens with regards to housing and this create animosity between the two groups. Due to the high rate of unemployment, South African citizens with Reconstruction and Development Programme (RDP) houses sub rent their houses to foreign nationals.

It was reported that South African citizens who own spaza shops, have to compete with foreign nationals. There were many spaza shops that were owned by foreign nationals. The foreign owned spaza shops undercut the prices of the locals and therefore the spaza shops owned by South African citizens have closed down. There is price competition between the locals and foreign nationals. The spaza shops and the working hours of the spaza shops were not regulated. The foreign owned spaza shops could be opened until late at night because many of them sleep in their shops.

The SAPS recommended that in order to curb the issue of violence against foreign nationals the socio-economic and security challenges should be addressed. There should be community education and mobilisation. There should be effective and efficient measures to address attacks against foreign nationals. The South African borders were porous and this needs to be addressed. The high rate of unemployment needed to be addressed, coupled with the shortage of houses, especially in the urban areas. The by-laws on trading should be enforced and the DHA should ensure that the undocumented foreign nationals are documented.

#### **4.3.2 The Agency for Refugee Education, Skills Training and Advocacy (ARESTA)**

ARESTA briefed the Committee on its work with regard to migrants in Cape Town. It is a Cape Town based Non-Profit Organisation that fulfils a practical empowerment role in educating and providing skills to refugees, asylum seekers and Cape Town community members. It conducts its work through social cohesion activities, training and workshops as well as through strategic partnership with local NGOs, CBOs and government departments.

#### **4.3.3 Hangklip, Hout bay and Imizamo Yethu Community Engagement**

The Committee engaged with members of the community who indicated that there were no attacks against foreign nationals in their areas. The community reported that the root cause of violence was unregulated business in their townships. The Imizamo Yethu residents live with a huge community of foreign nationals and everyone was protected. A foreign national who was killed in the area, just happened to be at wrong place at the wrong time. It could have been a South African who had been killed. It was emphasized that small businesses were not regulated and do not pay tax, and thus they are able to undercut South African businesses who pay tax. The employers prefer to employ undocumented foreign nationals because they pay them lower salaries.

### **5. Meetings held at Parliament**

The Committee met at Parliament on 4, 12 and 25 June; 4 and 25 August; 3 and 22 September and 10, 11, 13, 17 and 18 November 2015, engaging with all four stakeholder groups covered in this section.

#### **5.1 The Congress of the South African Trade Unions (COSATU)**

The Congress of the South African Trade Unions (COSATU) and the Hout Bay community organisation, Imizamo Yethu, briefed the Committee on issues relating to the recent violence against foreign nationals.

COSATU stressed that the issue of migration had a historical context, particularly colonialism and apartheid, and the artificial borders that had been created in this process. The violence one saw in the country - whether in sports, on the roads, or in shebeens over the weekends - was one of the legacies of apartheid, as the apartheid regime had exerted its power through violence and police brutality. The attacks on foreign nationals in informal areas in KZN and Johannesburg were also linked to the competition for scarce resources.

COSATU indicated that the underlying problem in the recent attacks on foreign nationals was that most employers were hiring illegal migrants at the expense of South Africans. The exploitation of these illegal migrants was made complex by the fact that illegal migrants were not protected by unions and therefore fell prey to exploitative employers. COSATU wanted to place it on record that there were elements of criminality in the recent xenophobic attacks against foreign nationals, including the looting of spaza shops. The South African Development Community (SADC) and the African Union (AU) could play an essential role in the promotion of peace, democracy and tolerance on the African continent, as political and economic instability had an impact on South Africa.

## **5.2 Imizamo Yethu SANCO**

SANCO leadership from Imizamo Yethu emphasised that the community of Hout Bay was living in harmony with a huge number of foreign nationals from different countries. However, the government needed to prioritise the provision of documentation of all people that were coming from other parts of Africa or the world so that everyone in the country could be monitored and tracked for security purposes. Local employers were taking advantage of the situation by employing illegal migrants who were willing to accept any amount that the employer was willing to offer. These employers should be held accountable for such a breach of the law. The Department of Small Business Development should impose regulations on small businesses that were foreign-owned in order to ensure that there was fair competition. It was clear that what had been termed as xenophobia in public was simply people who were fighting against unregulated resources, and it was important for government to take a stand in ensuring that all the foreign-owned businesses were taxed.

Members asked Imizamo Yethu whether the recent attack on foreign nationals in Hout Bay was because of a scarcity of resources, or due to criminal elements. One Member asked about the progress and impact that had been made by the Joint Business Forum (JBF) which had been established in Hout Bay after the xenophobic attacks in 2008 to ensure there was collaboration between foreign nationals and local South Africans who were involved in businesses in the townships. It was important to know if Imizamo Yethu had a database of the tuck shops that were foreign-owned in relation to those that were owned by South Africans in Hout Bay, in order to improve harmony in the area.

## **5.3 The City of Cape Town**

The City of Cape Town briefed the Committee on its strategy to anticipate and deal with violence against foreign nationals. The Social Disorder Hazards Disaster Risk Management Plan expresses the City's approach on the experiences of violence against foreign nationals in Cape Town in 2008 and a scientific risk assessment was conducted in order to determine broad threats. The plan had three main elements: early warning, preparedness and response, and recovery. The plan not only catered for violence against foreign nationals or xenophobia, but was also intended to deal with all forms of social disruption. Key to the plan was cooperation amongst the various spheres of government in line with their constitutionally assigned responsibilities.

The City of Cape Town indicated that dealing with this form of social unrest was more about social cohesion than policing. It was the State's duty to ensure that it promotes inclusivity and a state of national unity. A culture of tolerance needed to be instilled in the community, where there is understanding between different races, cultures, genders and socio-economic backgrounds. The feeling of some citizens in the Western Cape mirrored that in other parts of the country in that foreign nationals were taking away businesses, marrying people, and living in government housing schemes. The City of Cape Town therefore introduced a strategy to mobilise all the partners involved to have a social cohesion plan in place. The interventions included interacting with the National Disaster Management Centre and other national level

institutions, and also interactions with the United Nations High Commission for Refugees and reviewing the Social Disorder Hazards Disaster Risk Management Plan.

The City of Cape Town representatives outlined how the Social Disorder Hazards Disaster Risk Management Plan would operate in practice from the point of early warning to preparedness and action, and recovery. The presentation also noted the plan's response to the recent threat of violence in January 2015.

The City of Cape Town indicated that the root cause of violence against foreign nationals was due to a lack of social cohesion and tolerance, which was largely due to apartheid. Furthermore, the absence of economic opportunities and the competition for scarce job opportunities led to violence against foreign nationals. Representatives did not have statistics on the number of foreign people in the city, in various industries or who own businesses. However, the City of Cape Town had amended its by-laws to better regulate participation in informal trading. Further, it has a specialised unit to deal with complaints about discriminatory employment practices and to try and ensure equal participation in employment and business.

The Committee emphasised that Parliament had not yet come to the conclusion that the incidents of violence against foreign nationals were due to xenophobia as per the dictionary definition of extreme, irrational hatred of foreign nationals.

#### **5.4 Inter-Ministerial Committee on Migration (IMC)**

The Committee met with the IMC on Migration which was established on 22 April 2015 by President Zuma to promote orderly and efficient migration and peaceful co-existence between citizens and non-South Africans, as well as to consider social, economic and security aspects of migration. The Minister in the Presidency, J. Radebe, leads the IMC on Migration and presented its findings to the Ad Hoc Committee in terms of the root causes of the incidents of violence against foreign nationals.

The Presidency on behalf of the IMC on Migration indicated that the primary cause of the violence against foreign nationals is the increased competition arising from the socio-economic circumstances in South Africa. This was illustrated by statistics showing a growth in the number of unskilled immigrants entering the country since 2008. This is in the context of slowing economic growth and a decline in unskilled job creation. This has been heightened by a decade of poor implementation of immigration and border controls. Recent incidents in Makurung Limpopo and Grahamstown Eastern Cape show that if the underlying causes are not addressed there remained a considerable latent potential for resurgence of violent anti-foreign national sentiments.

Initial government research indicate that the total number of migrants in the country was between a lower limit estimate of five million and an upper limit of six million. It was thus highly likely that immigrants represented more than 10% of the country's population. Migrants were shown to often cross several countries before reaching South Africa, in some cases facilitated by those countries' officials. The presence of foreign nationals in South African communities was indicated to range from 3 to 24%, being higher in peri-urban areas. The IMC on Migration provided maps showing distribution of the migrant population and high concentration areas in Gauteng, Limpopo, KwaZulu Natal and Mpumalanga.

The IMC on Migration indicated the reasons for increasing migrants were the: pull factor of South Africa's relatively successful economy; abuse of the asylum seeker and permit waivers systems; corruption in the border environment and failed border coordination. Push factors include conflict and instability on the continent as well as lack of economic opportunities. It was also indicated that foreign nationals were placing a strain on government services such as health, housing, education and social grants. In the health sector bed occupancy of foreign nationals was between 10 and 20% and up to 50% in some areas in Limpopo.

The IMC on Migration indicated that foreign nationals were dominating trade in certain sectors such

as consumable goods in informal settlements which has had a negative impact on unemployed and low skilled South Africans. This is compounded by business models used by migrants to discourage competition such as forming monopolies, evading taxes, avoiding customs and selling illegal and expired goods. A publically available study by the Sustainable Livelihoods Foundation shows the dominance of immigrant ownership of spaza shops in a number of communities as compared to South African ownership.

Nationalities which dominate the additional low skilled labour force in the country are Zimbabweans, Mozambicans, Basotho and Malawians. These groups, it was indicated, were preferred by some businesses since they were un-unionised, work for lower wages and do not know their rights compared to South Africans.

The IMC on Migration indicated that challenges with migration policy of the country include: that no reservations were made to international agreements unlike other countries; that asylum seekers were allowed to work; and there being no provision to share the burdens of migration with other African countries. The visa waiver for SADC countries was indicated to be abused by people staying in the country illegally beyond the allowed 90 days which has led to a drastic increase in persons overstaying their permits since 2010.

In terms of measures being put in place by Government, the IMC on Migration indicated that a migration policy process was being led by the DHA and will soon produce a Green and White Paper for discussion. This would include dialogue with immigrant communities and the SADC region. Progress was reported in that the Refugee Amendment Bill was ready for tabling at Parliament and the legal and practical arrangements for the Border Management Agency were also progressing.

Other measures were said to include revisiting South Africa's unreserved accession to relevant UN conventions and the related changes to the Refugees Act (No. 130 of 1998) as well as measures to track and trace those persons who had overstayed the allowed time on their permits. A particularly urgent need to increase the capacity of the Standing Committee on Refugee Affairs, Refugee Appeal Board and Immigration Management Services. Measures were being put in place to decentralise the Refuge Reception Centres at ports of entry to ensure more restricted movement for rapid and controlled processing of applications. It was indicated that borderline management needed to be improved particularly in terms of expedited construction and repair of border fences and increased patrols.

Government Interventions to address the socio-economic challenges underlying violence were reported by the IMC on Migration to include:

- Prioritising economic growth and job creation through the implementation of the National Development Plan.
- Expediting the national programme to revitalise the township and rural economy.
- Developing and implementing the programme to audit and license informal businesses.
- Prioritise the granting of work permits to foreign national that have the skills needed by the economy.
- Involving traditional leaders in the development of mechanisms for the management and integration of foreign nationals in rural communities.
- Addressing the redesign of the migration management policy and practice for South Africa and the Southern African Region.

The National Joint Operational and Intelligence Structure (NATJOINTS) then presented the multidisciplinary integrated national action plan to reassert the authority of the state. This included a five pillar Action Plan to address the attacks on foreign nationals and to create peace and stability in the country. The five pillar action plan comprises aspects of Safety and Security; Humanitarian Services; Legal and Regulatory Frameworks; Communication and Community Outreach and International Cooperation.

## 6. Written Submissions

The Committee received 13 written submissions which were discussed and considered as part of the recommendations of this report. References to source documents and research cited in the submissions are not included but can be found in the original submissions available from Parliament on request. The submissions do not necessarily represent the views of the Committee but submitted recommendations are numbered in roman numerals at the end of each submission.

- AA Solomon. Journalist & Asylum Seeker from Cameroon
- Department of Labour (DoL)
- Consortium for Refugees and Migrants in South Africa (CoRMSA)
- Congress of South African Trade Unions (COSATU)
- Hate Crimes Working Group
- The Legal Resources Centre (LRC)
- People's Coalition Against Xenophobia
- Sonke Gender Justice
- Southern Africa Litigation Centre (SALC)
- Yonela Diko – Journalist
- Scalabrini Centre of Cape Town
- Jeena's Warehouse Workers / Professional Transport and Allied Workers Union
- Commission for Gender Equality (CGE)

### 6.1 AA Solomon. Journalist & Asylum Seeker from Cameroon

Mr Solomon reports being a victim of violence on April 17 2015 in Jeppestown, Johannesburg in which a group of assailants abusively shouting for all foreign nationals to leave South Africa, broke down the doors to his apartment. He had to break a window to escape along with other migrants but the police arrived quickly and housed a group of migrants at the Jeppe Police station overnight. When he returned to his property, a television, laptop and cash had been looted. Mr Solomon reports that his children have had to leave school and that he has had to seek other accommodation. He provided pictures of the damage done to his residence and bruises sustained in trying to escape the attacks. He has reported the incident to the Committee to Protect Journalists, UNHCR, Home Affairs and SAPS.

- i. Mr Solomon requests that his asylum case be determined soon and that provision is made to compensate the victims or provide them with the basics with which to restart their lives after the attacks.

### 6.2 Department of Labour (DoL)

According to the DoL, illegal cross-border flows and labour migration have been on the rise in recent decades. The rise can be attributed to globalisation; political instability; civil wars and the widening income gap between the rich and the poor in some of the neighbouring countries. These conditions force people to seek refuge and economic opportunities in the Republic of South Africa. Therefore some employers in South Africa see an opportunity to exploit migrants who seek refuge and economic opportunities in South Africa which itself is faced with a high rate of unemployment. This results in conflict between the South African citizens and other nationals.

The DoL view is that illegal cross-border flows can be prevented; however labour migration cannot be prevented, it can only be controlled by incorporating stringent measures in immigration and employment legislation. Although general cross-border migration falls within the legislative mandate of the Department of Home Affairs (DHA - Immigration), the DoL is involved in instances which are related to labour migration (employment) through the following two branches:

- Public Employment Services: provides public employment services; regulates private employment services and assists Home Affairs with certification for corporate visas.
- Inspection and Enforcement Services: conducts advocacy sessions on employment conditions; monitors compliance and enforces compliance with employment conditions.

The purpose of the Employment Services Act (4 of 2014 “ESA”) which came into effect recently is to: facilitate the employment of foreign nationals in the South African economy where their contribution is needed in a manner that gives effect to the right to fair labour practices contemplated in the provisions of section 23 of the Constitution of the Republic of South Africa; not impact adversely on existing labour standards or the rights and expectations of South African workers; and promote the training of South African citizens and permanent residents.

The Basic Conditions of Employment Act (75 of 1997 “BCEA”) has also been recently amended. The purpose of BCEA is to advance economic development and social justice by fulfilling the primary objectives which are to: give effect to and regulate the right to fair labour practices conferred by the Constitution by establishing and enforcing basic conditions of employment; and regulating the variation of basic conditions of employment as well as to give effect to obligations incurred by the South Africa as a member state of the International Labour Organisation (ILO).

The provisions of section 8 (Employment of Foreign Nationals) and section 9 (Prohibited acts in respect of foreign nationals) of ESA spell out what is required and prohibited in respect of employment of foreign nationals. The provisions of the BCEA are comprehensive and do not discriminate across employees, they cover foreign nationals working within the borders whether legal or illegal.

The DoL is contributing strategically and operationally in various platforms to ensure that foreign nationals working within the borders of South Africa continue to be protected. The DoL is constantly involved in strategic international and national discussions organised by ILO and national stakeholders on labour migration to affirm its commitment to protect foreign nationals working within the borders of South Africa. Furthermore the DoL has a strategic relationship with the DHA to ensure that there is proper implementation of controls and measures put in place to give effect to the purpose and provisions of ESA, BCEA and the Immigration Act.

The DoL is required by regulation 18(3)(a) of the Immigration Act to issue a certificate; which confirms that:

- Despite a diligent search, the prospective employer has been unable to find a suitable citizen or permanent resident with qualifications or skills and experience equivalent to those of the applicant.
- The applicant has qualifications or proven skills and experience in line with the job offer;
- The salary and benefits of the applicant are not inferior to the average salary and benefits of citizens or permanent residents occupying similar positions in the republic.
- The contract of employment stipulating the conditions of employment and signed by both the employer and applicant is in line with the labour standards in the Republic and is made conditional upon the general work visa being approved.

The DoL and DHA consulted and agreed on International Cross-Border Labour Migration (ICBLM) management legislative framework, policy principles and operational procedures for the work visa system.

The DoL through its inspectorate arm conducts inspections and audits on all companies seeking to employ foreign nationals through corporate visa applications. The inspection is based on compliance with the employment legislation of the Republic and thereafter a recommendation is made to the Public Employment Services. After the process is completed a consolidated report with recommendations/certificate is forwarded to the DHA. The

inspectorate branch plays an oversight responsibility during routine inspections. In workplaces where there are foreign nationals they require the employer and/or the relevant employees to produce work permits.

In instances where the inspector established that the foreign national employee (whether legal or illegal) is receiving less favourable treatment, the inspector will use the necessary provisions of the applicable employment legislation to enforce favourable treatment, which is equivalent to the treatment that ought to be received by a South African citizen.

Subsequent to the recent attacks in the KwaZulu-Natal Province, the DoL Provincial office attended a meeting convened by the SAPS Provincial Headquarters. One of the cases discussed was the Jeena Warehouse case which was alleged to have been sparked by employment of foreign nationals. The allegations were investigated and the finding did not substantiate the allegations because there was no proof that the employer employed foreign nationals at any given stage. A dispute that could be substantiated was around failed wage negotiations and the employees embarked on a strike from December 2014. The employer sought employment replacements; who were all South Africans. The CCMA was involved in resolving the dispute and the strike was eventually called off in July 2015.

The inspectors of the DoL also investigated another case in Pietermaritzburg where it was alleged that a certain truck company (Yocoob's Transport) was employing foreign nationals as truck drivers. The investigation revealed the following: The company had a staff complement of 47 employees and 34 of them were truck drivers. Out of the 34 truck drivers, 17 of them were foreign nationals from Zimbabwe. All the foreign nationals had work permits however some work permits had expired and the matter was referred to the DHA for further action. DoL inspectors in the provinces were also involved in various joint operations with immigration officers, SAPS, and Bargaining Councils in different areas in Pietermaritzburg, Newcastle and Durban.

Furthermore the DoL nominated one of its officials to a Team Leader from the Inspectorate branch to represent the DoL in the Interdepartmental Reintegration Task Team; which is facilitating the community dialogues to re-accept the foreign nationals back to the communities.

The DoL through its legislative mandate is actively involved both directly and indirectly in preventing violent attacks against foreign nationals. Although the provisions of employment legislation limit the DoL' scope of involvement, the DoL has made significant strides in ensuring that the foreign nationals are afforded equal treatment and protection in the workplace. Despite the limited scope and enabling conditions the DoL will continue to pledge its support against violent attacks against foreign nationals by participating in government initiatives and forums.

### **6.3 Consortium for Refugees and Migrants in South Africa (CoRMSA)**

CoRMSA serves on the Steering Committee for the National Action Plan (NAP) to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerances which is an outcome for all countries that signed the Durban Declaration at the UN World Conference Against Racism hosted by South Africa in Durban in 2001. According to CoRMSA South Africa, as host of this event, has not yet finalised its own action plan, which is not only internationally disappointing but has also contributed to denial and lack of action to combat xenophobia, particularly since the outbreak of violence in 2008. The Department of Justice and Constitutional Development has expedited the process following the violence against migrants that occurred in January and March this year and it is hoped that a draft NAP will be finalised for public comment in the near future.

CoRMSA is a founder member of the Hate Crimes Working Group, a network of civil society organisations from various sectors that work with vulnerable groups facing crimes motivated by hate, prejudice or bias. This includes migrant, faith based, gender and anti-racist organisations. The absence of specific hate crimes legislation makes it very difficult to find statistics on hate crimes, such as xenophobic violence, since such incidents are recorded as murder, looting, assault etc. without reference to the underlying motivation - why certain individuals are targeted.

CoRMSA is of the view that the current low rate of convictions and prosecutions for acts of violence against foreign nationals and other hate crimes sends the message that there is impunity for such criminal behaviour and is a contributing factor for on-going violence. CoRMSA proposed the following:

- i. The Committee should consider the adoption of hate crimes legislation in its recommendations.
- ii. The stated direction of the policy planned by the Department of Home Affairs in terms of managing the developmental benefits of migration, should assist government, civil society and communities in better understanding the positive effects of migration and countering the common misconceptions which can fuel xenophobic violence.

#### **6.4 Congress of South African Trade Unions (COSATU)**

COSATU recognises that the discourse about xenophobia cannot be discussed outside the general context of migration, underdevelopment and the prevailing conditions on the African continent. COSATU is of the view that one cannot understand or confront xenophobia outside its structural and fundamental roots, which are the generalised conditions of gross abuses, extreme poverty, competition for scarce resources and varying forms of discrimination and intolerance of diversity. In South Africa, these were reinforced by apartheid, which systematised racial and tribal relations and fostered separation, competition and individualism in society as part of the accumulation process. In addition to its oral presentation COSATU made the following recommendations:

- i. Placing primacy on organising migrant workers as a means to combating the super-exploitation of these vulnerable sections of the working class.
- ii. Condemning and exposing the widespread abuse and exploitation of the migrant workers by employers, agents and other intermediaries.
- iii. Promoting African heritage and affirming the positive values of Ubuntu, while challenging negative imagery and false linkages between migration and crime in the media.
- iv. Linking xenophobia to the call for a comprehensive development plan for the African continent, as well as campaigning against undemocratic regimes and human rights abuses which force people from their homes.

#### **6.5 Hate Crimes Working Group**

The Hate Crimes Working Group is a coalition of civil society organisations from various sectors across South Africa, advocating for legislation to deal with hate crimes and undertaking some of the most comprehensive research on these crimes in South Africa.

The Hate Crimes Working Group proposes hate crimes legislation as a critical component of a solution to the problem of what is generally perceived as xenophobia in South Africa. Hate crimes are committed against individuals because of a prejudice the perpetrator holds against an entire group of people, but directed at an available victim. Because of this, hate crimes impact not only on the victim of the crime, but also have devastating effects on the entire community that the victim belongs to (or is perceived to belong to). This makes hate crimes distinct in nature, in that they serve as a message of intolerance and intimidate and harass not just the victim, but whole communities. As a result, they not only impact the constitutional

rights of individuals and vulnerable groups and social cohesion, but have no place in a South African society that strives towards equality for all, non-racialism and non-sexism.

The objective of hate crimes legislation is not only to prevent hate crimes, but to allow for government and civil society to be provided with vital information about the nature and prevalence of this type of crime, to help develop appropriate plans and tools for tackling hate and prejudice-motivated crimes. This is vital to the societal transformation project. The Hate Crimes Working Group says that Minister Radebe in his former role as Minister of Justice and Constitutional Development, noted that hate crimes legislation would send a clear message that crime motivated by hate and intolerance will not be accepted. They submit that it is crucial for government to send this message, in order to help prevent any repetition of the tragedies in April this year.

The Hate Crimes Working Group say that currently the police in South Africa rarely investigate evidence of specific prejudice as a motivating factor in an offence. There is no obligation for them to do so under the current legal framework. This indicates a gap in the law, which effectively renders hate crime invisible in the justice system, specifically in course of criminal trial – while at the same time it is a horrible lived reality for many. The only time at which evidence relating to prejudice or hate on the part of a perpetrator may be aired in a courtroom, is potentially at sentencing stage, in aggravation – but this kind of evidence is rarely available due to the fact that police officers are not obliged to investigate for it.

- i. The criminal justice system cannot achieve justice for victims of hate crimes, if it takes no notice of the hate element of such crimes. The South African Human Rights Commission in 2009, in its report “Report on the Task Team of Members of Parliament Probing Violence and Attacks on Foreign Nationals”, specifically recommended hate crimes legislation be implemented. The Department of Justice has already made progress with a draft Hate Crimes Bill, and policy framework, on which it consulted with interested parties in 2013, and the Hate Crimes Working Group discussed this with the honourable Deputy Minister of Justice in a meeting on 27 July 2015. The Hate Crimes Working Group proposes fast-tracking hate crimes legislation. It urges the Committee to consider its role in making hate crimes legislation a reality in South Africa.

## **6.6 The Legal Resources Centre (LRC)**

The LRC is a public interest, non-profit law clinic in South Africa - with a focus on using the law as an instrument of justice to facilitate the vulnerable and marginalised to assert and develop their rights; as well as to contribute to the development of human rights jurisprudence and to the social and economic transformation of society.

The LRC draws a correlation between xenophobic sentiment, sexual violence and the impact it has on the lives of foreign women in South Africa, leaving foreign women vulnerable with little or no intervention from significant role players. Rape can be used as a tool to punish and humiliate women of different nationalities and ethnic groups. Research into this has not been conducted and perpetrators have not been interviewed to determine their motivation.

The LRC asks what is being done to protect and offer services to foreign women from sex crimes both related and unrelated to xenophobic sentiments. What is being done to make foreign women feel safe enough to report sex crimes without fear of the police and citizens themselves.

Given the backdrop of South Africa’s violent society in which sexual assault against women is endemic, it is not a mere assumption to argue that women of other nationalities are victims of such crimes as often, if not more, than South African woman are. The SAPS does not segregate the data it provides to the public according to the nationality of victims.

What is evident from research presented in the report of the LRC is that when analysing xenophobia, there is a considerable disconnect between perception and reality. As with any fear, most attitudes emanate from a wrong or biased perception of the feared/disliked thing or person rather than from a real or rational experience. The LRC thus recommend that:

- i. More be done to provide clear, well-researched and documented facts about violence against foreign nationals in South Africa, so that the facts can be clearly reported on. This will assist in rectifying and addressing the incorrect beliefs and fears of citizens.
- ii. Reporting needs to include the nationality of the victims and what motive the crime may have had, such as prejudice. Tracking these statistics can assist in how to protect victims in the future.
- iii. The South African government taking appropriate steps to alleviate the threats foreign women face as victims of sexual violence during attacks motivated by prejudice. The assertion of the LRC is that the South African government's response to xenophobic violence has been unsatisfactory listing numerous examples of this in their report.
- iv. The State has an obligation to protect. The constitutional rights that apply to everyone in South Africa (with a few limited exceptions) also apply to all persons physically present in South Africa. The government is therefore obligated to take reasonable measures to prevent violence from occurring, and to discourage anything that would serve to strengthen racial division.

## **6.7 People's Coalition Against Xenophobia**

The Coalition is made up of 11 South African civil society organisations including Awethu, SECTION 27, CoRMSA, Lawyers for Human Rights (LHR), Doctors without Borders, Corruption Watch, the African Diaspora Forum (ADF), the Nine Plus Unions and the Treatment Action Campaign (TAC). A similar organisation was created in response to the violence which occurred in 2008. For both initiatives, the Coalition indicated there was a recognition that xenophobia is a permanent presence in our society and there is a need to maintain vigilance against xenophobia and, in particular, against any resurgence in violence against foreign nationals.

Post 1994, government's initial approach to questions relating to international migration also reflected its acceptance of international human rights as the core of its policy and legislation. This included wide public consultations on the Refugees Act 130 of 1998 as well as the adoption and ratification of the 1951 UN Convention on the Status of Refugees.

The application of that legislation has been challenging particularly in respect to the asylum process. This is partly due to the large numbers of applicants (despite having drastically reduced since 2009), but more so due to poor management, a lack of coordinated policy and rampant corruption. The immigration system has also been geared toward attracting highly-skilled immigrants while ignoring the realities of South Africa's migration patterns. Economic migration and an assumption that economic migrants have migrated voluntarily with the intention of coming here and abusing the system, it must be recognised that economic strife (and deprivation) is often a result of conflict and political persecution. Conflicts, particularly on the African continent, can be of a short duration, but often recur several times, creating a sense of instability and ongoing danger to the local population. Rejection of those who fled conflict but do not qualify as refugees after years in the system does not automatically mean that they have come here to abuse the system.

The Coalition reports that when people approach the DHA, they are often denied access, are required to pay bribes, are treated with disdain and sometimes physically abused. It is their view that Parliament's Portfolio Committee on Home Affairs must take a strong stance against such abuses. Failure to gain access to documentation complicates access to other services, such as health. Even with documentation, however, health service providers often deny

services or require payment where no payment is authorised. This problem particularly touches women who require pre-natal or post-natal care.

The view of the Coalition is that the much of the resurgence of violence against foreign nationals in South Africa is due in part to the failure, from within and outside of government to learn lessons from the attacks which took place in May 2008. Since those attacks, there have been consistent and continued attacks against foreign nationals, particularly shop-owners in our communities. Reports and research conducted after the 2008 attacks, including by the Parliamentary Task Force set up in 2008 and the South African Human Rights Commission, were not taken forward in a meaningful way in order to combat the scourge of violence against foreign nationals. Whilst the South African Police Services (SAPS) improved communication with non-governmental organisations and bodies such as the United Nations High Commissioner for Refugees (UNHCR), this has not been enough to create a safe and secure environment for foreign nationals.

Public hearings should be held regarding past and future violence against foreign nationals in order to create a national plan of action to end such violence and to address the existence (and exploitation) of xenophobia in South African society resulting in attacks which are used as part of attempts to remove foreign nationals from communities. The Coalition suggest that an independent hearing process must take place with sufficient resources to ensure participation of all relevant stakeholders. They submit that such an independent process should take place through a process similar to that of the Truth and Reconciliation or through an independent Chapter 9 institution such as the South African Human Rights Commission, Public Protector or other such institution.

The Coalition indicated that numerous studies into violence against foreign nationals, from as far back as the 1990s, have pointed to an increase in xenophobic tendencies within South African society. These tendencies are not confined to one grouping and so cross racial, income and geographic differences. However, despite the evidence, there remains a tendency within South African society as a whole, and within some sectors of government in particular, to deny the existence of xenophobia and to reduce attacks on foreign nationals to mere acts of criminality no different to any other such criminal attacks against South Africans. Those who believe that xenophobia exists have been publically accused of being mischievous and unpatriotic. The Coalition argued that denying xenophobia is very dangerous as it robs the country of the opportunity of finding solutions to a very real problem.

The Coalition indicated that xenophobia denialism has been a problem since the attacks in 2008. President Thabo Mbeki, repeatedly stated that there was no xenophobia in South African society and what we saw was simply criminals taking advantage of the situation. This begs the question: what situation are the criminals taking advantage of, if not attacks that began because of xenophobia. Many factors have contributed to the large-scale attacks of 2008 and 2015, as well as the ongoing incidents of violence against foreign nationals, albeit on a more muted level, between those two events. One of those factors is no doubt criminality and the Coalition would concur that there are criminals who have used the situation to their own advantage. But this does not mean that the original impetus for the attacks was not xenophobic in intent and it must also be stressed that criminality and xenophobia are not mutually exclusive. The Parliamentary Task Force in 2008 recognise this reality in their report.

Based on the many years of work and research of its member organisations the People's Coalition make the following recommendations:

- i. Work directly with communities, has shown that where there has been engagement and dialogue with all members of the community, incidents of xenophobia occur far less or not at all.
- ii. Such work that is best performed by community-based organisations. However they have very few resources to do so. In line with the recommendations of the 2008 Task Team

- report, the Coalition would recommend that additional resources, such as funding through a “We are All Africans” programme be made available to community-based organisations.
- ii. In addition, a national dialogue should be created, perhaps through the same programme, to promote a type of social cohesion which includes all members of the community, including foreign nationals, breaks down misperceptions of foreign nationals, and discourages xenophobic sentiments and statements as counter-productive to nation-building.
  - iii. To remove inequalities and unfair exploitation, Parliament must perform its oversight role to ensure that the DHA fulfils its mandate and complies with its own legislation. It should also engage with the Ministry of Home Affairs in its policy reformulation to ensure that any new policy complies with our constitutional obligations of human dignity for all as well as complying with our international human rights obligations.
  - iv. The Coalition urge Parliament to understand the complexities of migration and come out firmly against any justification for the violation of the rights of foreign nationals. The flare-up of violence intended toward foreign nationals have also affected some South African citizens who are seen as outsiders within their communities.

## **6.8 Sonke Gender Justice**

Sonke works in South Africa and other African countries to ensure the development of just and democratic societies. Sonke works with women and men from all walks of life, but has always had a strong commitment to addressing the needs of socially excluded communities and worked within the broad areas of migration and xenophobia.

This submission contains the transcript of the full public address of King Goodwill Zwelithini at a ‘moral regeneration’ event held in Pongola on Human Rights Day 2015. This submission analyses extracts from the King’s speech and provides evidence that the King expressed strong anti-foreign national sentiment, and attributed a range of negative and harmful qualities to cross-border migrants that appeared to have elicited strong popular appeal among the King’s supporters.

Sonke report that after a complaint was laid against King Zwelithini with, the South African Human Rights Commission (SAHRC), the King had agreed to cooperate throughout the process, but the SAHRC had not made any findings yet. The King’s address is 50 minutes long and covers a wide range of topics that include the work of the police, the loss of respect, the destruction of property, laziness, climate change, and tourism, among others. Several sections in the address focus on cross-border migrants and these are set out in more detail below. The King introduced the topic of cross-border migrants. He claimed their alleged propensity to take other people’s money and expressed his fear that foreign nationals might overpower the police. Very soon thereafter, the King seems to suggest that he believes other nationalities view South Africans as fools and that the South Africans deserve to be robbed of their resources.

Sonke contend that the crux of the concerns over foreign nationals raised by the King in his speech suggest that foreign nationals have taken over and degraded entrepreneurship and the selling of goods, while making communities ugly and unhygienic. He suggested that cross-migrants are vermin (‘lice’, ‘bedbugs’, ‘wolves in sheepskins’) and urged the government, and the police in particular, to remove these elements, and also for foreign nationals to go back to their own countries. The King pointed out at various times that nationals from one country should not stay in another country to make a living, but should rather return to their country of origin.

Following the King’s address, it was reported that he had apparently called on traditional leaders to make sure that foreign nationals who seek to settle on their land are legally within the country. Foreign nationals who seek to settle on Ingonyama Trust-controlled land should be introduced to him in the company of their countries’ ambassadors. He noted that they

should follow additional administrative processes, such as double-checking the authenticity of documents and getting additional certifications from DHA or SAPS. It should be noted that as a monarch in a constitutional democracy, the King does not have the legal authority or mandate to issue any such orders.

Sonke indicate that after public pressure, the King addressed an Imbizo at the Moses Mabhida stadium that was attended by thousands of his followers, traditional leaders, national and provincial government leaders in KwaZulu-Natal on Monday 20 April 2015. The King called for peace. Yet, he claimed that his words in Pongola were taken out of context and said that he did not incite violence. This event provided an important opportunity for the King to apologise for his remarks in Pongola but he failed to do so. Sonke indicated that while the King should not carry the blame alone for the violence, his comments in Pongola inflamed existing sentiments in a context of already high levels of generalised violence, and extremely high levels of violence against migrants and refugees. The extracts from the King's actual speech are presented as evidence that his address vilifies cross-border migrants, shows little understanding of the material conditions and violent contexts that many cross-border migrants try to escape from in their countries of origin, and disregards South Africa's international legal obligations, as well as the ethical imperatives, to provide refuge for such vulnerable populations. Sonke believe the King's words in Pongola amount to 'hate speech' as set out in the Promotion of Equality and Prevention of Unfair Discrimination Act (the Equality Act).

In addition, Sonke recommend the Committee:

- i. To consider the new evidence not previously available in the public domain, and to hold King Zwelithini accountable for his words.
- ii. To encourage King Zwelithini to issue a full apology for his words in Pongola in March 2015 and to issue a public statement with unequivocal support for the respect of cross-border migrant rights, to condemn all forms of violence against migrants and to encourage his followers to do the same.
- iii. Requests the King to initiate and actively participate in community dialogues between South Africans and cross-border migrants with the aim of building stronger and more cohesive communities; and
- iv. Financially support the work of organisations that implement programmes to foster social cohesion and respect for diversity within communities, with a particular emphasis on KwaZulu-Natal.

## **6.9 Southern Africa Litigation Centre (SALC)**

SALC is a non-governmental organization based in Johannesburg, South Africa. It aims to provide support, both technical and financial, to human rights and public interest initiatives undertaken by domestic lawyers and local civil society organisations in Southern Africa. The main concerns the SALC wish to be addressed by the Committee are:

Violations of non- rights of migrants in South Africa: loss of lives, injuries to persons, damage to private property and the infringement of dignity. The SALC raises the question of how specific incidents are being resolved and what is being done to ensure that such events are not repeated. How will affected people be protected directly after attacks and how will the country be made a safe place for them rather than simply helping them to leave after outbreaks of violence.

The SALC are concerned about incitement to violence by persons in positions of authority. They wish to know how have the authority figures who have made comments which led to violence and played a role in perpetuating xenophobia and intolerance in the country been dealt with and how the country is making it clear to figures in positions of authority what our national stance on the rights of foreign nationals are.

After the incidents of police raids and mass deportations, the SALC indicate that officials were not following the correct procedural safeguards and violating the rights of foreign nationals, and wish to know how the staff involved will be disciplined and how the State will go about educating the police force about correct protocol and procedure in these situations.

SALC calls on the Committee to remind the South African government of the report compiled by the SAHRC after the 2008 xenophobic attacks and call upon the government and the SAHRC to immediately take steps to implement the recommendations found therein to:

- i. Protect migrants, refugees and other vulnerable foreign nationals from further attacks, by increasing impartial and effective police presence in high-risk areas and immediately implementing conflict resolution initiatives in these areas.
- 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 on durable solutions for refugees and asylum-seekers.
- iii. Bring perpetrators of violence against foreign nationals to justice. To facilitate such prosecutions the DOJ should set up special courts, as was done during the 2010 World Cup in South Africa. 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.
- 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.

#### **6.10 Yonela Diko – Journalist**

Mr. Diko proposes that each community has an unspoken informal set of codes which holds the community together irrespective of whether you are a foreign national or just new to the area. Integration (or rejection) lies in how quickly one identifies and complies with these unwritten social norms. Should the new arrival go as far to oppose or ridicule the shared community norms, hostility from the community is to be expected. The community protects those members who actively participate, care for and contribute towards the cohesion of that community but the reverse then also becomes true.

Mr. Diko outlines examples from his personal experience of the Somalian shop keepers in his area, who isolate themselves, appearing to show disdain for the community they live and work in and were dismissive of that communities poorer members as well as using the advantage their money brings with the local women.

Mr. Diko proposes that Africans' identity has been so scared by colonialism that it cannot see before or beyond it. Its legacy has degraded society to a 'dog eat dog' mentality where African's no longer have a proud unified racial identity but rather guard themselves against their differences. Mr. Diko recommends that:

- i. Foreign nationals should observe the township codes that all people who come from outside must observe.
- ii. A coordinated continent wide Afro-optimism campaign would go a long way to uplift the African identity.

#### **6.11 Scalabrini Centre of Cape Town**

Scalabrini Centre of Cape Town (SCCT) is a registered NPO that perceives migration as an opportunity and is committed to alleviating poverty and promoting development in the Western

Cape while fostering integration between migrants, refugees, and South Africans. In providing assistance, they advocate respect for human rights and use a holistic approach that considers all basic needs.

The research presented in the report of the SCCT suggest that triggers to the 2008 violence were political and leadership vacuums, lack of conflict resolution mechanisms, and a culture of impunity in which local leaders (both official and self-appointed) mobilised community members to exert control over the local area.

A lack of conflict resolution mechanisms resulted in conditions where the police were unable or unwilling to engage with communities to address issues that arose prior to the attacks. This failure resulted in communities perceiving an unwillingness on the part of the police and other leaders to address their concerns and led to the use of violent methods by the community to address the issue.

SCCT question how the police force and community leaders have been trained and empowered to be able to better handle xenophobic conflict in the appropriate manner? What conflict resolution mechanisms have been put in place to assist communities to resolve issues in a constructive way with the foreign nationals living in these communities? How are the police force and community leaders being educated about the rights of foreign nationals and the consequences of these rights being violated?

In areas that were not affected by anti-foreign national violence, research found that community leaders abided by the rule of law and also represented and protected the rights of all residents in the community, including foreign nationals. In doing so, community meetings were held in which issues were discussed and the greater concerns of protecting the community prevailed over violence.

Progress on these two areas has proceeded haphazardly since 2008. In regards to the DHA processing of foreign nationals, particularly those in the asylum system, the situation has deteriorated markedly since 2008. The most visible restriction has been the closures of the Johannesburg, Port Elizabeth, and Cape Town Refugee Reception Offices (RRO) to new asylum applicants leaving only three RROs open to new applicants across the country.

The practical result of this policy has been the creation of a large population of undocumented asylum seekers, both those unable to access the remaining RROs open for applications as well as those with expired permits who are unable to travel and who are vulnerable to exploitation by a range of actors. These individuals are also less likely to report crimes or access health services due to their undocumented status. It was observed during the recent spate of attacks, that the documentation status of foreign nationals is used as a justification for violence. Measures need to be put in place to speed up the processing of refugees. This plan needs to be issued to Parliament.

Litigation has been undertaken by civil society organisations against many of these restrictive policies and although the courts have found many of them unlawful, the DHA has not abided by the court orders in many instances. The failure of the Department to abide by these court orders and fulfil its obligations to assist and document asylum seekers and refugees reinforces the notion that asylum seekers and refugees fall outside of the law and are not worthy of legal protections. This has wider implications for society and the rule of law but is particularly harmful in regards to xenophobic violence.

With regards to the matter of speedy and efficient trials for individuals suspected and charged with committing violent acts towards foreign nationals, progress has also been haphazard. With regards to the 2015 attacks, the National Prosecuting Authority attempted to open special courts to address the attacks. However, recent reports have shown that little has been done to bring those responsible to justice.

Over the past years, discrimination against foreign nationals in the public service sector has been observed. Structural discrimination by state officials in various sectors such as health care, or public education, informs, shapes and perpetuates public sentiment. Examples of this are given in the report for health care workers and hospital administrative staff, SAPS and at public schools. This discrimination is reinforced by state officials who make public comments referring to asylum seekers as illegitimate, equating foreign nationals with criminals, and referring to foreign nationals as unworthy recipients of state resources.

The SCCT recommend that the Ad Hoc Joint Committee consider:

- i. How to increase respect for the rule of law with regards to migrants and to investigate the difficulties the justice system has encountered in attempting to prosecute those responsible for crimes against foreign nationals.
- ii. That the role of political leadership, at the national, regional, and local levels, is the key to inciting anti-foreign national violence in the recent attacks in Kwazulu-Natal and Gauteng. How is the government going to hold these entities accountable? How will the government go about re-educating these key groups on official policy and laws for upholding the rights of foreign nationals?
- iii. The 2008 Report of the Joint Task Team highlighted the need for the Portfolio Committee on Home Affairs to continue to exercise oversight over the DHA to ensure that it is able to fulfill its institutional mandate; in particular, it noted that 'regard should be given to ensuring the Department issues foreign nationals with correct documentation, maintains adequate records and ensures that corruption is rooted out of the Department.'
- iv. The Portfolio Committee on Justice and Constitutional Development 'should monitor progress in processing accused persons by the Special Courts established to speedily address the cases of violence against foreign nationals'.
- v. Closures of several Refugee Reception Offices has led to a restriction in the freedom of movement of asylum seekers who are required to report to the RRO of application for any administrative action on their permit. The DHA needs to inform parliament of how it is proposing to address the vacuum created by these closures.
- vi. The DHA needs to abide by the courts ruling. Failure to do so should have consequences and the director general should be held accountable.
- vii. How non-discrimination on the basis of nationality can be minimized through legal and policy frameworks which allow for equal access to civic services, in line with the Bill of Rights.

## **6.12 Jeena's Warehouse Workers / Professional Transport & Allied Workers Union**

According to their union representative, Mr. M Jama: on 15 December 2014 employees who worked for Jeena's Warehouse embarked on a protected strike in order to improve their working conditions. The employees had 10 years of service but were still employed as casuals not assured of being given work or payment for the given day when they arrived.

PTAWU also reports that during that strike, the employer arranged security officers and employed foreign nationals and had some employees who were working during the strike escorted by security. The security officers were reported to be Nigerians and Zimbabweans and carried firearms. The community felt threatened by the carrying of firearms and pointing them at community members which erupted in fighting. It was also reported an employee was dismissed because she was talking with those employees who were on strike.

On 17 June 2014 PTAWU reports meeting with the Department of Labour and the CCMA where all parties agreed that the strike must be terminated. The strike was suspended with an agreement that employees would commence their duties on 23 June 2015. However the employer on 23 June 2015 laid charges of assault and intimidation on the effected employees and on 25 June 2015 all employees were dismissed without a hearing.

At the time of reporting Jeena employees were still dismissed pending a case at the CCMA on 27 and 28 October 2015. The affected community was still aggrieved because Jeena's Warehouse refused to negotiate in good faith refusing to correct even one proposal that was made by the union during the CCMA certified strike. Parliament was requested to consider the dangerous possibility of the CCMA dismissing the case of unfair dismissal and the possibility of repeated violence against foreign national nationals. The remedy that the employees are hoping for is being reinstated at work and for the Department of Labour to inspect the working conditions of these employees.

### **6.13 Commission for Gender Equality (CGE)**

The CGE report submitted to the Committee was compiled after a fact finding trip undertaken by the CGE to the Chatsworth Shelter set up for the foreign nationals fleeing the threat of violence in Durban, KwaZulu-Natal. The purpose of the trip was to assess the conditions under which foreign nationals who were displaced from their homes and communities due to the incidents of attacks in Durban were living in the temporary shelter established. In line with the CGE's constitutional mandate to promote, protect and advance gender equality, the trip sought to focus special attention on issue of gender equality and the plight of women and children, to ensure that their rights were observed.

The Report contains the findings and recommendations based on insights and information gathered by the CGE delegation by utilising onsite observations, focus group discussions, informal conversations and dialogues conducted with the refugees, site management officials and non-governmental organisations working with those fleeing potential further violence against foreign nationals in the area. The CGE team was led by Commissioner Pinkie Sobhahle, accompanied by two other Commissioners and members of the CGE Secretariat from Gauteng and CGE staff from KwaZulu-Natal Office.

The findings contained in the CGE report, come to the overall conclusion that the Chatsworth Shelter operated within the minimum required standards. While some of the minimum standards were met by the KZN Provincial Government, some were not met. On the issue of security, the study concludes that adequate security was provided to the foreign nationals who reported feeling safe and protected. However, while the site was easily accessible through two access gates, on both these gates the CGE team felt that the security guards did not exercise adequate and due care in terms of controlling access to the site through the screening of vehicles as well as their passengers. To illustrate this point, the CGE vehicle was not subjected to standard security control protocols, including being adequately searched for potential security threats such as possession of banned objects including weapons. In addition, no member of the team was asked to declare if they had any weapons on them, and no metal detectors were used at the gate.

While doing site inspection, the CGE team noticed that the premises were not clean enough. The Expanded Public Works Programme (EPWP) was in place to keep the premises clean; however the CGE team was not impressed by the state of ablution facilities and the yard as a whole. There were toilet paper strips, used sanitary pads and an unacceptable amount of refuse that was lying all over the yard. What was of concern was that the children were playing with the dirty water from the toilets. CGE acknowledged that an effort was being made to keep the yard clean. There should, however, had been more frequent clean ups to ensure that the premises are habitable. The team noted one jungle gym for the children to play with, however, this was not enough to cater for the number of children at the shelter.

With regards to the provision of health services to the victims, the KZN Provincial Government made efforts to adhere to health standards as set out by the UNHCR. However, the conclusion reached by the CGE team was that health standards could have been improved. A supply of condoms could have helped to prevent unwanted pregnancies and prevent the spread of

sexually transmitted diseases. A full time mobile clinic could have helped provide ease of access for medical care for the foreign nationals. What the CGE team noted was that there was no supply of chronic medication for foreign nationals. This increases the risk of relapse of patients. The only arrangement that existed was for emergency cases where patients had to be taken to hospital by an ambulance. Moreover, pregnant women have special needs over and above ordinary women. These could have been prioritized. Prenatal and post natal clinics could have ensured that the pregnant women's health needs and their babies are taken care of.

The CGE team also concluded that the foreign nationals had enough clothing as well as blankets to protect them from the harsh weather conditions. This is in spite of some complaints noted from the refugees regarding clothing which was not appropriate for religious and cultural reasons. On the issue of food, the team concluded that adequate nutritious meals were provided to the refugees. While the issue of cultural and religious preferences with respect to food was raised, the CGE team concluded that sufficient healthy meals were provided. Based on the findings relating to children dropping out of school due to being held at the shelter, the CGE report concludes that the right of access to education of the children was violated by the site management and the KZN Provincial Department of Education by failing to ensure that the children continued to attend school even while housed at the shelter.

Emerging from the findings and insights contained in their report, the CGE make a number of recommendations for action by the various stakeholders and role players in the province. The CGE recommend that:

- i. Broader public debate be initiated by the KwaZulu-Natal Provincial Government, with relevant stakeholders and role players, to understand the underlying causes of xenophobia in the province and ways of combating this phenomenon. Such as debate should be part of the broader debate within the country regarding the underlying causes of xenophobia and the treatment of foreign nationals by South Africans. Furthermore, a dialogue with women who are victims of the attacks should be held where they share their experiences and raise recommendations on how they could be assisted.
- ii. Proper security protocols be observed and enforced at all times to ensure the security of residents at shelters. In particular, all vehicles and pedestrians should be thoroughly checked for possession of banned substances and objects, particularly weapons. A register should be retained to ensure that all individuals seeking to enter the premises of the shelter are required to identify themselves and produce some form of identification and to state their reasons for entering the premises of the shelter.
- iii. The site management make all the necessary arrangements to ensure that families and couples, especially married couples, are afforded the opportunity and space to live together instead of being split up. In addition, it is recommend that site management endeavour to ensure the privacy of families, especially mothers and pregnant women. The issue of privacy for women at shelters is important. The CGE team noted that while women were provided with dignity packs to use during their monthly menstrual cycles, some of these packs were inadequate. Also the women did not have the necessary privacy which they needed during such periods. In addition pregnant women should be provided with pre-natal and post-natal care at the shelter. The CGE team took note of many pregnant women who were not provided with such care. Post-natal care is particularly important to ensure recovery after child birth. CGE also recommend that breastfeeding mothers be given priority in terms of food rations.
- iv. Victims of Muslim Religion are provided with a place of prayer, it is also recommended that they be provided with appropriate meals and be given the opportunity to prepare their own food should they wish to do so.
- v. A safe play/recreational space be created for the children housed in the shelter with the necessary facilities for the children to play with. Finally, for the children who had to drop out of school due to the attacks, CGE recommend that the Department of Education put the necessary measures in place to ensure that the children are not denied their right to education. If necessary and where feasible, they recommend that the Department of

Education makes arrangements to provide transportation and security for the children at the shelter to continue attending school. Alternatively, they recommend that the Department explore the idea of securing the services of tutors to come to the shelter to render educational services to the children. In addition, the Department should make specialist services such as psychological/counselling services available for the displaced children.

## **7. Committee Findings**

The Committee, in the process of probing violent attacks against foreign nationals made a distinction between the root causes of the problem, the symptoms or indicators of the problem and results of the problem. The root causes of the problem were identified as social, economic and political issues affecting both South African nationals and foreign nationals. The Committee identified symptoms or indicators of the problem as how those affected by the social, economic and political causes responded to their situation. The Committee made the following findings:

7.1 There was a rapid coordinated response in assisting those affected once the violence broke out in 2015. Security, shelters, transport and marches, community meetings on reintegration and repatriation, amongst others, were organised by Government involving many role players in a coordinated way.

7.2 The Committee found, as reported by the IMC on Migration, that there was an immediate intervention and long term coordination of different departments and tiers of government as well as business and NGO's in preventing recurrence of the larger scale violence noted in 2008.

7.3 In terms of foreign nationals who were affected by the violence that took place in 2015, the Committee found that when they are affected by high levels of poverty, unemployment and political instability; they leave their countries of origin and come to South Africa to seek employment, establish small businesses and seek refuge particularly in townships and rural areas. Those affected by unstable political conditions in their countries of origin come to South Africa as political refugees often establishing themselves in such small businesses for survival purposes. They regard South Africa as a politically stable and peaceful country where one can start a new life. There are also those who come to South Africa for education purposes and as professionals who are able to obtain work permits.

7.4 The Committee found that South Africans affected by high levels of unemployment and poverty establish themselves in small business such as spaza shops, tuck-shops, hair salons, car mechanics, panel beaters and street vendors. These small businesses function at a survivalist level and receive minimal or no support from government and thus are particularly sensitive to increased competition.

7.5 Out of seven people who were killed during the violence in 2015, the Committee found that three were South Africans and four were foreign nationals. Two South Africans were killed by stray bullets from foreign nationals with unregistered firearms shooting at those stealing from their shops. One foreign national was killed when pursuing a thief from his store. Another foreign national was killed when a Somali store was set alight. Two foreign nationals were killed as a result of a dispute later found to be a domestic issue between those foreign nationals.

7.6 The main causes of the violent attacks were criminal actions that started with stealing of goods from foreign owned spaza shops by South African criminals who are often drug addicts. The spaza shop owners would react by shooting at those who steal from their spaza shops using unregistered firearms rather than reporting to the police. When this happens and someone is killed, local communities retaliate by looting spaza shops owned by foreign nationals also rather than reporting to the police.

7.7 There is some exploitation of foreign nationals by organised business requiring longer hours for less pay than South Africans, particularly in sectors such as tourism, taxi services, gardening and domestic services, car guarding and security services etc. This creates resentment amongst South Africans. Foreign nationals are also exploited due to not being unionised or being undocumented.

7.8 There is a disadvantage experienced by South Africans in partnering with foreign owned business and the labour market through the foreign nationals' perception that South Africans are lazy.

7.9 The lack of implementing a social cohesion programme, following the 2008 violence against foreign nationals, all influence the tendency for foreign nationals to not integrate into the communities in which they reside. In rural areas there is more integration due to better established means of social inclusion. There is, however, still a lack of integration even in rural areas. This is indicative of a need for more initiatives aimed at integration focussed both on South Africans and foreign nationals. Lack of integration leads to challenges in accessing services. The predominance of illegal entries in the country accentuates the difficulty in government planning to provide services for them.

7.10 There are some streets in Durban and Johannesburg that are operated exclusively by foreign nationals (as 'no-go' areas for South Africans). These include certain areas such as Mahatma Gandhi road and Russell street in Durban. The isolation of foreign nationals in South Africa contributed to a culture of non-cooperation with South Africans in business and the tendency for dominating certain trade sectors and locations. This results in inadequate services provided to these communities in comparison to the broader community.

7.11 Some shops run by foreign nationals appear to be owned by big businesses which fund them exclusively and offer the advantage of procuring goods cheaply, as well as sourcing counterfeit goods. South Africans were unable to access the advantage of big business support. There was an indication that these owners were not necessarily even residing in South Africa. This also contributed to a shift of ownership of small businesses from primarily locals to foreign nationals in several areas for which the IMC on Migration provided statistical evidence.

7.12 It was found that despite the offer of reintegration by the Mkhambathini Local Municipality; there were still around 150 foreign nationals being offered shelter at a private farm in Cato Ridge (Hope Farm, owner A. Wartnaby). The foreign nationals at the farm have refused offers of reintegration or repatriation offered by the Municipality after they left other shelters in part due to wishing to be resettled in a third safe country.

7.13 There were a number of security related risks found by the Committee such as in Gauteng where indications were that some ex-military personal from other African countries were residing in communities. In this regard, the Committee identified that this was a security risk within some migrant groups in the country. In addition there was a mushrooming of unregistered places of worship which was of concern. There were also small businesses such as salons and NGOs that were found to be a front for illicit activities such as brothels or trade in narcotics.

7.14 Many foreign nationals seeking asylum in the country were found to in fact be economic migrants.

7.15 Most of the immigrants who ran away from their businesses and residential areas, did that out of fear of being attacked and were mainly influenced by the media especially social media which used manipulated images. Those who feared that they would be attacked, ran to police stations for protection which showed a trust that this protection would be provided by

the South African authorities as well as demonstrating foreign nationals' understanding of the principle of the South African Constitution which guarantees protection of all people in South Africa.

7.16 The Committee agreed, in relation to the violence against foreign nationals, that interventions should not only focus on the responsibilities of the South African government and society, but that governments in migrant countries of origin should also take responsibility for the political and socio-economic conditions that caused their citizens to flee their home countries and come to South Africa in search of a better life. Several foreign nationals indicated the desire to return to their countries once the circumstances improved. This reinforced the need for South Africa to play a pro-active role in peace-keeping and other assistance on the African continent.

7.17 The violence related to migrants was found to be amplified by these complex challenges:

- Rapid urbanisation in relation to land use planning and management.
- Pressure on basic services and amenities.
- Absence of permits means many foreign nationals cannot enter the formal economy (cannot open a bank account, apply for a formal job, apply for credit or loans, pay taxes or buy a car) so are forced into the informal economy out of necessity to earn an income.
- Regulatory compliance particularly for small businesses needs to be improved in terms of local by-laws on health and safety, land use zoning and the issuing of business permits.
- South Africans qualifying for RDP housing, rent them out to foreign nationals. It is common for these foreign nationals to then open spaza shops in these houses.

7.18 The Committee noted foreign nationals who had an unfair business advantage in township and rural spaza shops. This is due to the fact that wholesalers are operating spaza shops. The person running the shops do not own them and this makes it difficult for SAPS to trace persons implicated in crimes.

7.19 The Committee also noted the proliferation of shopping malls with no consultation or partnership with existing small businesses. This lack of consideration of development of communities results in the closure of many small businesses.

7.20 The Committee acknowledged the efforts and report of the IMC on Migration in overseeing the prevention and response to violence against foreign nationals.

7.21 The Committee noted, that many foreign nationals are integrated into urban and traditional communities where they live peacefully with their South African neighbours, many of whom they married and have families with. It is arguable that the interventions of the South African government at local and national level had in some ways improved the facilitation of entry of other nationalities into South Africa.

## **8. Conclusion**

The Committee concluded that there are some people within South African communities who use derogatory language such as the word "kwere kwere" when referring to foreign nationals. Such a tendency is not different from using the "k" word which was used by white people in South Africa when referring to black people during the apartheid era, and the other "c" word when referring to Indians. In the United States of America, black Americans were called the "n" word and in Canada the natives were called "Red Indians". The use of these words amounts to discrimination against another person on the basis of race, colour of the skin, geographical location and country of origin and can be construed of as xenophobic. In South Africa such discrimination is denounced both in the Freedom Charter which was adopted in 1955 by the

Congress of the People and in the South African Constitution of a democratic South Africa which was adopted in 1996.

The Committee concluded that the general high levels of crime, inequality and competition for scarce resources have a negative impact on both citizens and non-citizens in South Africa. The increasing competition for scarce resources amidst low economic growth and a growing population of unemployed low skilled South Africans is accentuated by the rise in unskilled foreign nationals immigrating into the country from the rest of the African continent. It was also discovered that there was a tendency of violence targeting foreign nationals particularly in the context of rapid urbanisation and high competition between small businesses and work seekers in already densely populated townships. The improved coordination of different departments and tiers of government and the rapid response in assisting those affected was, however, noted in preventing recurrence of the larger scale violence noted in 2008.

Inasmuch as the vast majority of the country shows no indications of violence specifically targeting foreign nationals, the Committee noted that a comprehensive social cohesion and integration framework was still lacking. This is particularly for large urban areas and in the prejudice that could still be found in how government services were offered. A key area of intervention identified was the need for better coordination and monitoring of the provision and enforcement of small business licences, which appears to be adding to tension between aspects of communities.

The recommendations which follow emerged after the Committees engagements, oversight, meetings and consideration of written submissions.

## **9. Recommendations**

Emanating from its engagements, oversight, meetings and public submissions, the Committee recommends the following:

1. The Committee in recognising that the actual problems which affect both South Africans and foreign nationals are socio-economic; recommends the affected countries and Parliaments work together to address socio-economic and political conditions as well as in promoting peace and stability.
2. Government through the work of institutions such as the IMC on Migration, and such bodies at a provincial level, should continue to monitor, pre-empt and protect vulnerable communities. Operations such as Fiela should be supported until such time as the root socio-economic causes of violent attacks are addressed.
3. There is a continued role for the South African Government to play in peace-keeping and other assistance on the African continent.
4. There is a need for better policing of containers and counterfeit goods by South African Revenue Services at ports of entry such as through the use of cargo scanners.
5. There needs to be an emphasis, not only on the rights, but also the responsibilities of migrants. The South African Human Rights Commission could contribute to such education campaigns in the country.
6. The continued progress reports of the IMC on Migration should be tabled with the respective Parliamentary Committees for monitoring of implementation of the recommendations.
7. The Department of Small Business Development should better assist South African small businesses both in financial and non-financial needs.
8. Government through the Minister of Arts and Culture should further promote social cohesion by all government departments across all races and nationalities, including through the use of intercultural sport.
9. Municipal Government in Gauteng and KwaZulu-Natal needs to better ensure the provision and monitoring of business permits. Many businesses, such as those in residential houses,

are not compliant with municipal by-laws and there is a tendency of issuing too many licenses in one area.

10. The Provincial Government of Gauteng, KwaZulu-Natal and the Western Cape should exchange ideas on addressing prejudicial violence since each province has different strengths.
11. The Premier of KwaZulu-Natal should submit to Parliament and publish widely the report of the Special Reference Group once it is completed.
12. The Premier of Gauteng should ensure that mechanisms are put in place to better ensure implementation of Government policy of 30% procurement from Small, Medium and Micro Enterprises and 70% local procurement.

**Report to be considered.**