

# Rights of all must be respected

The narrative of “foreigners stealing our jobs” is a global phenomenon, and not unique to South Africa alone, write  
**Fola Adeleke and Thandi Matthews**

The Constitution is clear: All people have the right to dignity, equality and freedom. As the Supreme Court of Appeal once noted, “human dignity has no nationality. It is inherent in all people – citizens and non-citizens alike – simply because they are human”. This inherent right arising out of our humanity extends not only to everyone’s right to life, freedom and security of the person, religion, language and culture, belief and opinion. It also extends in the Constitution to socio-economic rights such as housing; healthcare, food, water and social security; education; amongst a range of other rights articulated in the Bill of Rights.

The broad articulation and extension of the Bill of Rights to everyone, including non-nationals, is not without controversy. The Constitutional Court has, in the past, limited the ambit of the socio-economic rights on the basis of nationality and citizenship. Such limitations in the highest court do not go unnoticed and feature in the policy-making and attitudes of structures of power across government in the treatment of foreigners. These interpretations, arguably, betray the intention of the drafters of the Constitution who recognised the vital role that many countries played in providing refuge and resources to South Africans during the liberation struggle, and in recognition of the country’s historic migrant labour system that extended far beyond its borders.

Yet, with growing frequency, every few years foreign migrants are targets of violence and discrimination in communities across South Africa. Worryingly, as witnessed with the recent Eastleigh Primary School debacle, or the state-sanctioned march against foreign nationals, discrimination against non-nationals appears to be entrenched in many of the institutions that govern our society, too.

Such entrenched discrimination is the antithesis of the responsibility of state institutions to pro-actively and systematically integrate vulnerable non-nationals into our communities.

Much has been written about the structural failures by the state to adequately address the political, economic and social factors that lead to xenophobic violence, discrimination and exclusion experienced by non-nationals in South Africa. This is despite the numerous interventions and committees established to address the issue. Following the outbreak of violence against non-nationals in 2008, which left more than 60 people dead, the South African Human Rights Commission (SAHRC) noted that, despite the country’s transition to democracy, violence continues to be viewed as a legitimate means of resolving issues.

It is worth noting that the victims of these structural failures include vulnerable South Africans and non-nationals who are most in need of state intervention. In informal settlements, in particular, poor infrastructure, poorly resourced police, and authoritarian leadership structures intersect to create conditions that undermine the rule of law and fuel distrust of state authorities. More recently, the Special Group on Migration and Community Integration in KwaZulu-Natal – led by former UN High Commissioner for Human Rights, Judge Navi Pillay – found that increased competition for employment, basic social services and business opportunities has exacerbated tensions and mistrust between and within communities.

Consequently, non-nationals who have formed part of affected communities for years, constantly have to confront the reality that they have yet to achieve meaningful



Members of the SAPS patrol an area around the Jeppe Street men’s hostel where South African men attacked shops owned by foreign nationals overnight in downtown Joburg recently. Incidents of xenophobic attacks occurred in Pretoria and Joburg at the end of last month. The deployment of police was increased in the hotspots to try to contain the outbreaks of violence.

PICTURE: KIM LUDBROOK / EPA

acceptance within South African society, a source of great trauma and fear.

The inability of the government to adequately address the socio-economic hardships in many of South Africa’s under-resourced communities perpetuates the marginalisation of non-nationals who co-exist with South Africans. These non-nationals are often fellow Africans who experience differential treatment in the hands of state institutions and these have real impact on the protection of their human rights.

In *Khosa & Others v The Minister of Social Development & Others*, the Constitutional Court noted that “the exclusion of permanent residents in need of social-security programmes forces them into relationships of dependency upon families, friends and the community in which they live, none of whom may have agreed to sponsor the immigration of such persons to South Africa... [A]part from the undue burden that this places on those who take on this responsibility, it is likely to have a serious impact on the dignity of permanent residents concerned who are

cast in the role of supplicants”. In light of the most recent social security crisis, it is crucial for the government to consider the impact that it may have, not only on South Africans dependent on the system, but also non-national permanent residents who are entitled to such payments but face victimisation due to their nationality.

Outside of the Khosa judgment, the frequent outbursts of violence directed at non-nationals further demonstrate the lack of awareness by many South Africans of the provisions contained in the constitution and the Bill of Rights.

The SAHRC report notes that common reference to “illegal immigrants” assumes that immigration status precedes the constitution in determining the rights of people.

Moreover, the legacy of apartheid racialisation and categorisation has obscured the link between xenophobia and ethnic prejudice. However, to assume that feelings of prejudice toward non-nationals is a “poor-on-poor” phenomenon is a mistaken belief; for example, as noted by Lawyers for Human Rights research conducted

by the Southern African Migration Project in 2010 demonstrated that higher-income South Africans were the most xenophobic and unwelcoming of non-nationals in South Africa. In many instances where non-nationals are victims of violence, South Africans with little means offer the most support to their neighbours as they, too, bear the brunt of the outcomes that ensue.

It is, therefore, imperative that South Africans and non-nationals alike have access to factual information, and to clarify and counteract inaccurate information, as to the causes of their frustrations, and where to direct their anger.

The media has an essential role to play in this regard. As highlighted in the Pillay report, during the 2015 tensions that flared up in KwaZulu-Natal, social media was often used as a tool to exaggerate rumours that suggested a widespread purge of foreign nationals in the area.

These rumours found themselves reported in mainstream media outlets, which often included videos and imagery from unrelated incidents or the 2008 vio-

lence, and broadcast throughout the world.

The spread of misinformation, and the failure of media houses to verify and contextualise these violent occurrences, resulted in widespread panic and may have reinforced existing tensions within communities.

It is also necessary for leaders at all levels of government to make responsible public statements, and to consider the potential ramifications of their statements, which may be perceived as harmful to a group of persons. This includes acknowledging the problem and labelling it as what it is – xenophobia – rather than a patronising dismissal of the problem.

For society at large, the government needs to commit resources to social cohesion and sustainable community relations as identified in the Pillay report. Within government, the sensitisation and education of civil servants in law enforcement, social security, and public health, about the rights and treatment of non-nationals is also necessary.

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unique to South Africa.

Arguably, the international human rights system has failed to address the complexities and challenges of migration in the age of globalisation.

Modern migration encompasses forced and voluntary movement, and includes people fleeing conflict, political instability, natural disasters, persecution, poverty and a lack of employment opportunities. Those on the move include migrant workers, refugees, asylum seekers, trafficked and smuggled persons, women, children, people with disabilities, LGBTQI persons, all of whom are vulnerable and require support from host governments as they pursue a better life for them and their families.

It is important that South Africans remember the values upon which our constitution was founded and ensure that our government takes the necessary measures to protect all who live in our society. A failure to do so will be an indictment on us all.

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