



SOCIO-ECONOMIC RIGHTS & ACCOUNTABILITY PROJECT

6 September 2019

Open Letter to the Chair and Members of the
African Commission on Human and Peoples' Rights
31 Bijilo Annex Layout,
Kombo North District, Western Region
P.O. Box 673 Banjul,
The Gambia
Emails: au-banjul@africa-union.org;

Dear Madam/Sir:

Re: Request to submit case on persistent xenophobic attacks on Nigerians and other African citizens in South Africa to the African Court on Human and Peoples' Rights and to seek an effective remedy and reparation for Nigerian victims

Socio-Economic Rights and Accountability Project (SERAP) is writing to request the African Commission on Human and Peoples' Rights (African Commission) to urgently submit a case on persistent and escalating xenophobic attacks on Nigerians and other African citizens in South Africa to the African Court on Human and Peoples' Rights and to seek an effective remedy and reparation for Nigerian victims, as these attacks constitute serious violations of the human rights of Nigerians and other African citizens in South Africa.

We also urge the African Commission consider the xenophobic attacks as amounting to serious and widespread violations of human rights of Nigerians in South Africa, and to seek in the case to the African Court, punitive damages and adequate compensation of \$10 billion (USD) on behalf of the hundreds of Nigerian victims and their families. This amount will sufficiently take into account individual harm suffered by victims.

We urge the African Commission to also draw the attention of the Assembly of Heads of State and Government of the African Union to the xenophobic attacks and violence since they reveal the existence of a series of serious or massive violations of human and peoples' rights, as provided under Article 58 of the African Charter on Human and Peoples' Rights so that the AU can consider taking punitive action against the South African authorities on their failure to implement their obligations under the Africa Charter and the AU Constitutive Act.

This request is entirely consistent with the African Commission's rules of procedure and the Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights. Taking this step will show that African Commission and African Court can cooperate in taking action against massive human rights violation in South Africa.

SERAP is a non-profit, nonpartisan, legal and advocacy organization devoted to promoting transparency, accountability and respect for socio-economic rights in Nigeria. SERAP received the Wole Soyinka Anti-Corruption Defender Award in 2014. It has also been nominated for the UN Civil Society Award and Ford Foundation's Jubilee Transparency Award. SERAP serves as one of two Sub-Saharan African civil society representatives on the governing Committee of the UNCAC Coalition, a global anti-corruption network of over 380 civil society organizations (CSOs) in over 100 countries.

Over 200 Nigerians have been reportedly killed since 2008, several more have been displaced from their homes while more than 300 Nigerians have registered for evacuation from South Africa. Shops and businesses by Nigerians have been looted or destroyed, and high-ranking political leaders have deliberately fuelled the attacks and violence. The impact of the violence and attacks on Nigerian women and children has been devastating, as children have been unable to attend school due to fear of attacks. Many Nigerians are now relocating their wives and children to Nigeria while they stay back to work in South Africa.

The South African authorities have acknowledged that serious rights violations have occurred. For example, Lucky Ogbonna, a trader reportedly lost over N100 million worth of goods to the attack. Ogbonna escaped being killed by letting go of goods. Another victim, Alfred Okechukwu, reportedly lost goods worth around N9 million. His shop was completely burnt down.

In February 2017, parents reported that xenophobic prejudice was being extended to local schools. For example, the Eastleigh Primary School in Edenvale, Gauteng threatened to refuse the children of foreign nationals access to education. In May 2008 more than 60 people were killed, more than 600 injured and over 20 000 people were displaced in the Gauteng and Western Cape Provinces.

South African authorities have repeatedly failed and/or refused to take any meaningful action to end xenophobic violence and attacks against Nigerians, and address the root causes of these attacks. Also, the justice system has not satisfactorily dealt with the arrest and prosecution of perpetrators let alone ensure an effective remedy and reparation for victims.

SERAP notes that the African Commission has condemned the xenophobic attacks and violence, noting that "the attacks not only constitute possible violations of the African Charter on Human and Peoples' Rights but are also contrary to the principles and ideals of African solidarity cherished in the African Charter."

It is now time for the commission to move beyond mere resolutions and statements. The commission should pursue legal action to seek an effective remedy and reparation for victims, as the South African authorities have failed and/or refused to implement the commission's Resolution ACHPR/Res.131 (XXXIII) and Resolution ACHPR/Res.304 (LVI).

SERAP is seriously that the African Commission, which is the main body mandated with promoting human and peoples' rights on the continent—has so far failed to hold South African authorities to account for these crimes and to deter repeated violations and attacks against Nigerians.

Every African citizen in South Africa is guaranteed the rights to life and human dignity no matter their nationality or migration status. The African Commission should call on high-ranking political leaders in South Africa to immediately end public statements, which amount to advocacy of hatred or incitement to discrimination, hostility or violence.

This is a key moment for the commission to push for the protection of human rights of Nigerians and other foreign nationals in South Africa. The African Commission ought to make it clear to the South African authorities that the Nigerian victims of the heinous crimes that have occurred have a right to an effective remedy and reparation, which includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

South African authorities cannot expect Nigerian victims to resume their lives as though nothing happened. Time is of the essence as the failure and/or refusal by the South African authorities to respect the right of Nigerian victims to an effective remedy and reparation for the xenophobic attacks have continued to fuel repeated violence with devastating consequences and an entrenched culture of impunity of perpetrators.

Pursuing the case before the African Court and seeking adequate compensation in the sum of \$10 billion (USD) would help to ensure justice to the victims and deter South African authorities and high-ranking public officials including South Africa's former deputy minister of police, Bongani Mkongi, who incite hatred, violence and discrimination. Mkongi had at a press conference claimed that residents of the Hillbrow neighborhood of Johannesburg are 80% foreign born.

This would also ensure the full and effective implementation of the African Commission's Resolution ACHPR/Res.131 (XXXXIII) and Resolution ACHPR/Res.304 (LVI) as well as its press statements of 2017 and 4 April 2019, which expressed grave concern over xenophobic attacks that took place in 2008, 2015, 2017 and 2019 respectively.

The lack of accountability and adequate compensation for the xenophobic attacks and violence committed against Nigerians in South Africa for many years has fostered a sense that there are no consequences for violence. Pushing for payment of \$10 billion (USD) compensation for Nigerian victims of xenophobic attacks and violence can demonstrate that the days of impunity for these crimes are gone, and that this time justice will be delivered to the victims.

If the Nigerian victims see that a process for ensuring adequate compensation for the crimes committed against them in South Africa is underway, it will also discourage revenge violence and killings and help break the cycle of violence that is now spiralling beyond control in the country.

If the commission does not pursue a case for compensation for victims, the Nigerian government may compel it to do so before the court. The call for an effective remedy and reparation for the victims of xenophobic attacks and violence is

overwhelming, and comes from direct victims and their families, from the Nigerian government and the leadership of the National Assembly.

Prior to the outbreak of the current xenophobic violence and attacks against Nigerians, the government of South Africa was failing to protect the human rights of foreign nationals in the country. Particular human rights concerns include restriction of the right to freedom of movement, violation of the right to life, equality, dignity and the security of their person and property as enshrined under Articles 3, 4, 5, 12 and 14 of the African Charter.

Significant efforts are needed to foster a culture of respect for the human rights of foreign nationals in the country. The African Commission should play a decisive role by beginning to call for broad human rights reforms that will ensure full protection and safety of Nigerians and other African citizens in South Africa.

The African Court has held that as long as the rights allegedly violated are protected by the African Charter or any other human rights instruments ratified by the State concerned, in this case South Africa, the Court will have jurisdiction over the matter if it is brought by the African Commission, pursuant to Articles, 2, 3(1) and 5(1) (a) of the Court's protocol.

For the sake of the victims, the African Commission should move swiftly on the matter, given the extreme gravity and urgency of addressing the issues and preventing further harm to Nigerians and other foreign nationals in South Africa. Unlike for individuals and NGOs, the African Court Protocol does not require Nigeria to have made the declaration under Article 34(6) for the Commission to submit a case on behalf of Nigerians before the Court.

Thanking you in advance of your attention to these pressing issues. SERAP is available to provide the African Commission with further information as required.

Sincerely,

Kolawole Oluwadare
Deputy Director
Cc

1. The Secretary, African Commission on Human and Peoples' Rights
2. Honourable Commissioner Solomon Ayele Dersso, Commissioner Rapporteur for the Republic of South Africa
3. Honourable Commissioner Lucy Asuagbor, Special Rapporteur on Rights of Women
4. Honourable Commissioner Rémy Ngoy Lumbu, Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa
5. Honourable Commissioner Maya Sahli Fadel, Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons