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30 April 2018

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South Africa: Treatment by society and authorities of black Africans of foreign origin who are citizens or permanent residents; state protection available (2017-April 2018)
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

South Africa's *Community Survey 2016* indicates that there were, in 2016, 1,578,541 residents who reported to be born outside of South Africa, but warns that it "is important to note that the migration flows and patterns [reported] ... need further investigation as they do not conform to expected outcomes" (South Africa 2016, 24-25). According to the same source, in comparison, there were 2,188,872 foreign-born residents in 2011, and the source notes that the difference between the two years "may highlight instilled fear of disclosure of one's origin" (South Africa 2016, 24-25). The same source indicates that the total South African population in 2016 was 55,653,654 individuals, resulting in foreign-born persons reportedly representing 2.8 percent of the total population (South Africa 2016, 19, 24). According to the same

source, of those born abroad, 39.6 percent are from Zimbabwe, 20.2 percent from Mozambique, 11.1 percent from Lesotho, 2.2 percent from the Democratic Republic of Congo, 2.1 percent from Nigeria, 1.5 percent from Ethiopia and 0.8 percent from Somalia (South Africa 2016, 27).

1. Treatment by Society

A March 2017 article from the *Washington Post* written by a "radio and television journalist from Johannesburg" explains that, in South Africa, xenophobic violence "often" targets Nigerians, Somalis, Malawians, Pakistanis and Zimbabweans and that the "acts of violence are specifically targeted at African and Asian migrants" (*The Washington Post* 2 Mar. 2017). Similarly, according to a March 2017 opinion piece by a researcher at the African Centre for Migration and Society (University of the Witwatersrand, South Africa), hostility towards foreign nationals is pervasive in South Africa, and it results in "cases of murder, injuries, threats of mob violence, looting and the destruction of residential property and businesses, as well as mass displacement" (Misago 1 Mar. 2017).

According to the *Washington Post* article, black foreign nationals are "seen as encroachments and threats" and common accusations levelled against them "on radio and television" include "dirty," "criminals," and "drug peddlers" (*The Washington Post* 2 Mar. 2017). A March 2018 opinion piece by a researcher at Nelson Mandela University published in *Mail & Guardian*, a South African weekly, states that xenophobia is "reserved mainly for poor black foreigners" from Africa who face "Afrophobia, hostility, threats, violence, looting, displacement and even murder" (Heleta 22 Mar. 2018). Similarly, the US Department of State's *Country Reports on Human Rights Practices for 2017* indicates that, throughout 2017, incidents of xenophobia "generally were concentrated in areas characterized by poverty and lack of services" (US 20 Apr. 2018).

Sources report that, on 24 February 2017, a march, described as "anti-immigrant" (Los Angeles Times 24 Feb. 2017) and "anti-foreigner" (SowetanLive 24 Feb. 2017) occurred in Pretoria (*Los Angeles Times* 24 Feb. 2017; SowetanLive 24 Feb. 2017). In a media statement issued in February 2017, the Acting National Police Commissioner of the South African Police Service explains that the march was organized by the Mamelodi Concerned Residents group (South Africa 24 Feb.

2017). According to the African News Agency (ANA), the Mamelodi Concerned Residents is a group of individuals "protesting against the proliferation of brothels and drug dens they blame on immigrants" (ANA 24 Feb. 2017). SowetanLive, the website of the *Sowetan*, a South African daily newspaper (SowetanLive n.d.), reports that marchers, along their 15-kilometre march, teared down shelters of pilgrims, "the majority of them Zimbabweans and Malawians," who were camping outside the Tshwane Events Centre for a weekend-long church service (SowetanLive 24 Feb. 2017a). According to the same source, "about 1,000 people" marching during the event "overturned trailers acting as mobile kitchens" that sold food to the pilgrims (SowetanLive 24 Feb. 2017). The same source reports that, according to one of the pilgrims, the mob was chanting anti-immigrant songs as it destroyed their camping site and trailers, and took their bags (SowetanLive 24 Feb. 2017).

The police media statement related to the Pretoria march indicates that a group of people from Atteridgeville [west of Pretoria] "blocked roads, burnt tyres and threw stones" and confronted another group of "non-South Africans" (South Africa 24 Feb. 2017). The same source states the following:

Law enforcement acted speedily in arresting 136 people over the past 24 hours during stabilising operations. They were arrested in connection with various crimes including the looting that took place in Atteridgeville and Pretoria West this morning. (South Africa 24 Feb. 2017)

Similarly, the *Los Angeles Times* reports that police arrested 136 people, "many of them protesters and looters armed with clubs, sticks, pipes and rocks," and that migrants, "terrified of being attacked," also armed themselves with sticks and clubs (*Los Angeles Times* 24 Feb. 2017). Reporting on the same event, Agence France-Presse (AFP) states that police in Pretoria formed lines to keep 500 protesters apart "as tensions r[is]e between some South Africans and migrants from Nigeria, Zimbabwe, Somalia, Pakistan and elsewhere" (AFP 24 Feb. 2017).

The BBC reports that then-President Jacob Zuma said "the protests were 'anti-crime' not 'anti-foreigner'," and that he has "condemned recent acts of violence and intimidation directed at African immigrants living in South Africa" (BBC 24 Feb. 2017). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2. Treatment by Authorities

2.1 Healthcare

Information on access to health care by migrants in South Africa was scarce among the sources consulted by the Research Directorate within the time constraints of this Response.

According to an article published on 29 March 2018 by Daily Maverick, a South African news website, the South African Human Rights Commission (SAHRC) stated that migrants face challenges in accessing healthcare due to a "conflation" of the various categories of migrants to which they belong, together with their respective rights and entitlements (Daily Maverick 29 Mar. 2018). According to the SAHRC, it results from this that all migrants are treated as economic migrants or as illegal migrants "who have little to no legal entitlements to socio-economic rights, such as the right to proper health care" (Daily Maverick 29 Mar. 2018). Without providing further details, the South African Department of Health indicates on its website that the South African National Health Insurance system ensures that all citizens and "legal long-term residents" have access to "essential" healthcare (South Africa n.d.). The Daily Maverick indicates that, according to a doctor from the Gauteng provincial department of health, all foreign nationals, barring asylum seekers and refugees, are classified as "full paying patients" when accessing healthcare in the province (Daily Maverick 29 Mar. 2018). The same source states that the challenges faced by migrants in South African hospitals include the following:

- Language barrier which only adds a problem to migrants getting proper care.
- Xenophobic attitude from health care service providers towards migrants.
- Refugees and asylum seekers being charged to pay up front for treatments.
- No consistency from one hospital to the next
- Failure to provide documentation leads to migrants being denied access to health care services. (Daily Maverick 29 Mar. 2018)

Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2.2 Employment

Section 2 of South Africa's *Employment Act, 1998* (Act No. 55 of 1998) [1] provides the following:

2. The purpose of this Act is to achieve equity in the workplace by--
 - a. promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and
 - b. implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational categories and levels in the workforce. (South Africa 1998)

The *Employment Equity Amendment Act, 2013* of South Africa provides the following definition of "designated groups":

Amendment of section 1 of Act 55 of 1998 ...

...

"designated groups" means black people, women and people with disabilities who--

- a. are citizens of the Republic of South Africa by birth or descent; or
- b. became citizens of the Republic of South Africa by naturalisation---
 - i. before 27 April 1994; or
 - ii. after 26 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date but who were precluded by apartheid policies;"

...

(South Africa 2013, emphasis in original)

Information on access to employment by black African permanent residents and black Africans who became citizens after 26 April 1994 but do not belong to the category mentioned in the Amendment of section 1 of Act 55 of 1998 cited above could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2.3 Treatment by Politicians, Officials and Police

According to a December 2016 article published by the South African daily newspaper *Business Day*, Mario Khumalo, a Pretoria politician, registered a political party with anti-foreign national sentiments, the South African First party (*Business Day* 21 Feb. 2017). Sources indicate that the party aims to drive foreigners out of South Africa (*Cape Times* 8 Feb. 2017; *Business Day* 21 Feb. 2017), and has more than 10,000 followers (*Cape Times* 8 Feb. 2017). The *Business Day* article quotes Khumalo as stating the following:

"We are not xenophobic but we work in the interest of South Africans. It is about national identity and pride. There is no nationality called African. You are either South African, Angolan or Ethiopian. My (identity document) states that I am a South African, not African." (*Business Day* 21 Feb. 2017)

In an opinion piece published in March 2018, on This Is Africa (TIA), an online forum with articles written by "mostly African writers" (TIA n.d.), the author states, without providing further details, that a member of Parliament belonging to the Economic Freedom Fighters political party, Floyd Shivambu, "caused a stir" by questioning the nationality of South Africa's Minister of Home Affairs, Malusi Gigaba, "based on [his] 'darker' skin" (Vava 23 Mar. 2018). The same source states that Shivambu said that Gigaba was a criminal, "so he had to be a Zimbabwean" (Vava 23 Mar. 2018). Without providing further details, the same source adds the following:

Attributing criminality to foreigners from other African countries has constantly been used by South African officials in reckless populist gestures that leave a sour taste in the mouth. In 2017, the former Minister of Police, Fikile Mbalula, said that the criminals in Johannesburg were ex-soldiers from Zimbabwe, as if to blame all of South Africa's problems on foreigners. (Vava 23 Mar. 2018)

Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

In a July 2017 article from Eyewitness News (EWN), a South African news website, Deputy Police Minister Bongani Mkongi is cited as stating that "it's unacceptable that South Africans are surrendering their land to foreigners" (EWN 14 July 2017a). In another EWN article, Mkongi is cited as stating that 80 percent of Hillbrow [a Johannesburg neighbourhood] was "occupied" by foreign nationals and that foreign nationals are "hijacking old buildings while locals don't have anywhere to go" (EWN 14 July 2017b). According to SowetanLive, the SAHRC condemned the

comment made by Mkongi about the hijacking of buildings in Johannesburg and described Mkongi's utterances as "xenophobic" (SowetanLive 17 July 2017). The same source quotes the SAHRC as stating that

"[n]ot only are the statements factually incorrect, (in that he claims, without evidence to the effect, that '80%' of the city is occupied by foreign nationals), they also unjustifiably ascribe crime to foreign nationals as an undifferentiated group [.]" (SowetanLive 17 July 2017)

A February 2017 article from GroundUp, a South African news agency, indicates that, according to a spokesperson for the African Diaspora Forum (ADF) [2], the mayor of Johannesburg, Herman Mashaba, "has incited the ongoing violence against immigrants in Gauteng," the burning of shops and the organization of the anti-immigrant march in Pretoria (GroundUp 23 Feb. 2017). The same source reports that Mashaba was quoted as saying that "[illegal immigrants] are holding our country to ransom and I am going to be the last South African to allow it" (GroundUp 23 Feb. 2017). However, the same source indicates that Mashaba, following his remarks, issued a statement condemning xenophobia, and it quotes Mashaba as stating that "[f]oreign nationals are not our enemy. Instead of planned xenophobic marches, the national government should be held to account for its failure to create meaningful and sustainable economic growth for our country and to secure our borders." (GroundUp 23 Feb. 2017)

Without providing further details, an October 2017 SowetanLive article reports that Mashaba and the ADF reached a "historic" settlement after the ADF had lodged a complaint to the SAHRC against Mashaba's alleged xenophobic comments (SowetanLive 31 Oct. 2017). Mashaba reportedly reiterated he condemned xenophobia (SowetanLive 31 Oct. 2017).

Two March 2017 articles by the same journalist published by different sources indicate that an anti-xenophobia march was planned in Pretoria (SowetanLive 9 Mar. 2017; *Business Day* 9 Mar. 2017). According to the article in *Business Day*, the Tshwane metro police did not approve the anti-xenophobia march because the march's organizers, the Coalition of Civics Against Xenophobia, "failed to provide the [police] department with a letter from the person to whom they would hand the memorandum," at Union Building [where the President of South Africa's office is located], as required by the relevant bylaws (*Business Day* 9 Mar. 2017). According

to the Tshwane metro police, the organizers "ended up 'handing over the memorandum and reading it to themselves'" before dispersing (*Business Day* 9 Mar. 2017). The two articles by the same journalist indicate that, in their memorandum, protesters demanded an investigation and prosecution of the mayor of Johannesburg, Herman Mashaba, "for inciting violence in his anti-immigrant utterances" (SowetanLive 9 Mar. 2017; *Business Day* 9 Mar. 2017). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

In correspondence with the Research Directorate, a representative of the Lawyers for Human Rights, a Johannesburg-based NGO, stated that law enforcement agents "use similar methods as was applied by the apartheid regime to enforce 'compliance of pass laws'," and explained that "[f]or example, police will randomly stop darker skinned black African people and ask them to provide documentation" (Lawyers for Human Rights 25 Apr. 2018). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

3. Incidents of Violence

Sources indicate that the following incidents of violence involving foreign nationals occurred in 2017 and 2018:

- On 6 January 2017, a Congolese man was reportedly beaten to death while in police custody, after police arrested him while he was coming home from a party; according to a witness, the police said the Congolese man "was not cooperating with their orders" (GroundUp 21 Feb. 2017).
- On 7 January 2017, according to the *Northern Cape Express*, a South African weekly, a mob in Kuruman attacked and looted tuckshops owned by foreigners (ACLEDA [2018], event 1105910);
- On 20 February 2017, rioters in Duduza blocked a road with burning tires, "vandalised traffic lights" and prevented schoolchildren from attending schools, while alleging that a local company, Gibela, did not hold "its promise to hire local residents" over foreign nationals; 10 people were arrested by police (Sowetan 21 Feb. 2017).
- On 29 and 30 May 2017, according to *The Mercury*, a South African newspaper, "violent" riots erupted and shops owned by foreign nationals were looted in north Durban, before schoolchildren in KwaMashu took to the streets with signs calling for an end to violence against women and children; it "seems at the root of the unrest ... are rumours circulating on social media that foreign

- nationals have been abducting local children," but the police said that these rumours were false and that "no cases have been opened"; at least one foreigner was assaulted (*The Mercury* 30 May 2017);
- On 16 October 2017, protesters in Embalenhle, Mpumalanga [east of Johannesburg], looted Somalian shops and "burned down municipal buildings during an ongoing service delivery protest"; several arrests were reportedly made (*News24* 16 Oct. 2017);
 - On 20 January 2018, according to *Daily Trust*, a Nigerian newspaper, the Nigerian community in South Africa said that a mob in Krugersdorp (near Johannesburg) "destroyed" four shops and "several" houses belonging to their members, alleging that a Nigerian abducted and raped a South African girl (*Daily Trust* 21 Jan. 2018). According to the same source, two weeks previously, more than five shops and houses owned by Nigerians were burnt in Rustenburg by taxi drivers who alleged that Nigerians sold drugs to a gang that attacked their members and also alleged that one Nigerian had abducted and raped a South African girl (*Daily Trust* 21 Jan. 2018). The same article states that two Nigerians have been killed in Rustenburg and Durban "since the attacks began" (*Daily Trust* 21 Jan. 2018). On its English language website, the *People's Daily*, a Chinese daily, reports, without giving further details, that an investigation has been launched in the cause of the death of a Nigerian in Rustenburg on 20 January 2018 and that, on 22 January 2018, South Africans responsible for the "violent attack" on Nigerians in Durban have been apprehended and arraigned (*People's Daily* 23 Jan. 2018);
 - On 23 February 2018, according to an op-ed by two scholars from the University of Cape Town, a Tanzanian student at the University of Johannesburg was killed by two men in a taxi in "what may be South Africa's first known violent xenophobic attack on a university campus," though the attack began off campus (Freemen and Lee 20 Mar. 2018). The same source indicates that, according to the chairperson of the ADF, the victim was wearing "African attire"; the taxi driver was apprehended and released on the same day (Freemen and Lee 20 Mar. 2018).
 - According to a March 2018 article from the *Saturday Star*, a South African weekly newspaper, in the previous three weeks, 15 properties owned by Johannesburg Property Company were "taken over" by members of the Orange Grove community [a part of Johannesburg] who claimed that the city of Johannesburg was "overlooking homeless South Africans in favour of foreigners"; members of the group who took over the houses ignored eviction notices served to them the year before (*Saturday Star* 15 Mar. 2018);
 - On 15 March 2018, according to the *Star*, a South African daily, 31 persons were arrested for "public violence" after police fired rubber bullets to disperse "people evicting foreigners from city-owned houses" (ACLED [2018], event 1031182);
 - On 2 April 2018, according to Xinhua News Agency, protesters looted and burned delivery trucks in the province of KwaZulu-Natal,

alleging that local truck companies were hiring foreigners as truck drivers; 11 people were reportedly arrested by police (Xinhua News Agency 2 Apr. 2018).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Notes

[1] The *Employment Equity Amendment Act, 2013* provides the following:

Amendment of section 2 of Act 55 of 1998

2. Section 2 of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:

"(b) implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational [categories and] levels in the workforce." (South Africa 2013, emphasis in original)

[2] The ADF is a non-profit organization representing African migrant communities living in South Africa (ADF n.d.).

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Oral sources: African Centre for Migration & Society; African Diaspora Forum; Hate Crimes Working Group; International Organization for Migration – Regional Office for Southern Africa; Nigeria Union in South Africa; Open Society Foundation for South Africa; Researcher specialized in migration in South Africa; Scalabrini Centre of Cape Town; South African Human Rights Commission.

Internet sites, including: Amnesty International; eoi.net; Hate Crimes Working Group; Human Rights Watch; Open Society Foundation for South Africa; South Africa – Statistics South Africa; South African Human Rights Commission; UN – Refworld.

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