



Australian Government
Refugee Review Tribunal

Country Advice

South Africa

South Africa – ZAF36058 – Ghana – Dual
Citizenship – Ghanaians – African migrants
– Xenophobia
1 February 2010

1. Can a Ghanaian citizen by birth become a dual citizen?

Preliminary reading of the Ghanaian *Constitution*, 1993¹ and the *Citizenship Act*, 2000² provide for the possibility of dual citizenship. However, this is a qualified right, subject to approval by the responsible Minister.

Under the *Constitution*, a Ghanaian citizen ceases to be a citizen of Ghana if he, “by a voluntary act, other than marriage, acquires or retains the citizenship of a country other than Ghana.”³ The *Citizenship Act* provides that a:

citizen [of Ghana] who has lost his citizenship as a result of the law in Ghana which prohibited the holding of dual citizenship by a Ghanaian may on an application to the Minister be issued with a certificate of citizenship which shall be effective from the date of issue.⁴

Migrants do not become South African citizens merely by virtue of marriage to a South African Citizen⁵, although there are particular provisions relating to the acquisition of South African citizenship by non-South African nationals married to South African nationals.⁶

Advice from the Ghanaian Consular General’s office⁷ indicates that a Ghanaian citizen who is granted citizenship of a second country is deemed to have lost his Ghanaian citizenship. However, Ghanaian citizenship (including dual citizenship) can be regained upon application to the Minister who may reinstate Ghanaian citizenship and issue a Certificate of citizenship.

¹ Government of Ghana 1993, *Constitution of the Republic of Ghana*,
<http://www.parliament.gh/book/export/html/60> - Accessed 2 February 2010 - Attachment 1

² UNHCR, *Citizenship Act* 2000 (Ghana), s16(5), (Gazetted 5 Jan, 2001)
www.unhcr.org/refworld/pdfid/3eda135a2.pdf - Accessed 2 February 2010 - Attachment 2

³ Government of Ghana 1993, *Constitution of the Republic of Ghana*, Chapter 3, s8(1)
<http://www.parliament.gh/book/export/html/60> - Accessed 2 February 2010 - Attachment 1

⁴ UNHCR, *Citizenship Act* 2000 (Ghana), s16(3)(b), (Gazetted 5 Jan, 2001)
www.unhcr.org/refworld/pdfid/3eda135a2.pdf - Accessed 2 February 2010 - Attachment 2

⁵ Southern African Information Institute (SAFLII), *South African Citizenship Act* 1995 (Republic of South Africa), s14: “... no person shall acquire or lose South African citizenship by reason merely of a marriage contracted by him or her”, http://www.saflii.org/za/legis/num_act/saca1995271.pdf - Accessed 2 February 2010 - Attachment 3

⁶ South African High Commission, ‘Dual South African Citizenship’, (undated),
http://www.sahc.org.au/citizenship/Dual_Citizenship.htm - Accessed 28 January 2010 - Attachment 4

⁷ Antwi, P., (Minister, Ghanaian Government, Consular Matters) 2010, Email to RRT Country Information ‘Re: Ghanaian Citizenship: Confirmation of Advice’, 15 February - Attachment 22

2. Does South Africa recognise dual nationality in circumstances where a national of Ghana by birth acquires citizenship of South Africa through marriage to a South African citizen?

South Africa recognises dual citizenship and does not require applicants to renounce their citizenship of birth. However, South African citizens are required to apply for, and be granted permission to retain South African citizenship prior to the acquisition of foreign citizenship. If a South African citizen does not obtain this prior permission they will automatically lose their South African citizenship on voluntary acquisition of foreign citizenship.⁸

Under South African law, a foreigner's marriage to a South African citizen does not have a direct impact on the citizenship status of either foreign spouse.⁹

3. Is there information specifically about the situation of former nationals of other African countries who have lived in RSA for a number of years, acquired RSA citizenship, and established profitable businesses?

There is little information which directly relates to black Africans who have become naturalised South African citizens and run profitable businesses. However, foreigners and those who are perceived to be foreign have frequently reported being subjected to a variety of discriminatory practices and being targeted by police and groups of South African workers or neighbours for theft, extortion or violence.

The following information examines various ways in which non-nationals and perceived non-nationals have experienced discrimination and violence.

Discrimination & Access to Services

An Immigration and Refugee Board of Canada response dated 29 March 2007¹⁰ provides information on the social treatment of foreigners from other African countries in South Africa. The response contains advice provided by the Director of the Forced Migration Studies Programme, University of Witwatersrand on 22 March 2007. According to the Director of the Forced Migration Studies Programme, "almost all foreigners in the country...experience discrimination and harassment from bus drivers, people on the street, landlords, and the police."

A report by the Consortium for Refugees and Migrants in South Africa (CORMSA), *Protecting Refugees, Asylum Seekers and Immigrants in South Africa*, June, 2008:

outlines many of the ways non-nationals – refugees, asylum seekers, and other immigrants – are excluded from the services, welfare, and dignity they are guaranteed by South African law and Constitutional commitments.

Violence against non-nationals while by no means new – reached unprecedented levels in 2008 in a wave of attacks that left many dead; thousands displaced; and permanently damaged South Africa's moral authority at home and abroad. As horrific as they were, these attacks are but an extreme sign of how non-nationals are treated as 'outsiders' by

⁸ Southern African Information Institute (SAFLII), *South African Citizenship Act 1995* (Republic of South Africa), http://www.saflii.org/za/legis/num_act/saca1995271.pdf - Accessed 2 February 2010 - Attachment 3

⁹ South African High Commission, 'Dual South African Citizenship', (undated), http://www.sahc.org.au/citizenship/Dual_Citizenship.htm - Accessed 28 January 2010 - Attachment 4

¹⁰ Immigration and Refugee Board of Canada 2007, ZAF102483.E – *South Africa: Societal treatment of foreigners from other African countries, in particular from the Democratic Republic of Congo (DRC); access to equality courts; availability of state protection (2000-2007)*, 29 March – Attachment 5.

various elements of our society, from members of the public, to civil servants, service providers, and government leaders.¹¹

Access to Employment

Many of the non-nationals living in South Africa are highly educated and skilled. Because documents and qualifications from their home countries are not readily recognised in South Africa—or because those documents were destroyed or left due to war—many are working far below their qualifications or are unable to find suitable employment. The need for non-nationals to undertake additional training in South Africa to have their qualifications recognised levies additional expenses and serves as a further hurdle to employment.

There are many instances in which South African employers and organizations have sought to systematically exclude foreigners from given professions or from working in particular areas, for example the Security Industry Regulation Authority's (SIRA) refusal to register foreign security personnel in 2005. SIRA has sought to make South African citizenship a criterion for registration and employment in the field.¹²

Access to Accommodation

The 2008 Consortium for Refugees, Asylum Seekers and Immigrants in South Africa (CORMSA) Report notes:

The vast majority of non-nationals seek housing through the private sector. However, non-nationals renting privately are regularly discriminated against by landlords who do not distinguish between documented and undocumented foreigners. In many instances, landlords refuse to rent to non-nationals regardless of their legal status. Others take advantage of non-nationals' vulnerability and charge them higher rental rates than South Africans...

...Proposed prohibitions on foreign land ownership promote the perception that non-nationals are not welcome in South Africa. This is a major barrier to attempts at integration and reinforces xenophobic ideas that non-nationals—regardless of their legal status—cannot be full members of South African society.¹³

Access to Financial Services

The CORMSA report also provides the following information on non-nationals' access to financial services:

- Many migrants continue to lack access to credit or banking services;
- Migrants are more likely to be victims of crime and police extortion because their assets remain in cash;

¹¹ Consortium for Refugees and Migrants in South Africa, 'Protecting Refugees, Asylum Seekers and Immigrants in South Africa', p.6, 18 June 2008, Lawyers for Human Rights Website, <http://www.lhr.org.za/publications/2008-cormsa-report-protecting-refugees-asylum-seekers-and-immigrants-south-africa> – Accessed 13 November 2008, Attachment 6.

¹² Landau, Loren B. et al 2005, 'Xenophobia in South Africa and Problems Related to it', *Forced Migration Working Paper Series 13*, January, Forced Migration Studies Programme at University of the Witwatersrand website, pp.21-22, http://migration.org.za/wp-content/uploads/2008/03/13_Xenophobia.pdf – Accessed 13 November 2008, Attachment 7.

¹³ Consortium for Refugees and Migrants in South Africa, 'Protecting Refugees, Asylum Seekers and Immigrants in South Africa', pp.8-9, 18 June 2008, Lawyers for Human Rights website, <http://www.lhr.org.za/publications/2008-cormsa-report-protecting-refugees-asylum-seekers-and-immigrants-south-africa> – Accessed 13 November 2008, Attachment 6.

- Without access to credit, large numbers of entrepreneurial non-nationals are prevented from starting businesses that would generate further job creation for South Africans.¹⁴

The Forced Migration Studies Programme at the University of the Witwatersrand states:

Patterns of exclusion are also evident in private sector industries where one would expect to see the profit motive trump discriminatory tendencies. However, foreigners—even those with rights to live in the country—are often limited in their ability to access even the most rudimentary banking services including bank accounts and credit (Jacobsen and Bailey 2004).¹⁵

Access to Health Care

Human Rights Watch (HRW) published a report in December 2009, '*No Healing Here: Violence, Discrimination and Barriers to Health for Migrants in South Africa*'.¹⁶ HRW reported that:

The DOH [Department of Health] has a complicated system of user fees in the public health system, including various subsidies, which vary from 20 to 100 percent of the total cost of health care depending on the type of care and the income level of the patient. Documented and undocumented asylum seekers, refugees, and other documented migrants are eligible for partial subsidies for basic health care, and may access ART [Anti-Retroviral Treatment] and prenatal care for free.

Undocumented migrants from southern Africa should have access to emergency care and treatment of communicable disease without charge, and should be assessed according to the subsidized fee schedule for other kinds of care. However, reception staff at clinics and hospitals regularly [charge] asylum seekers, refugees and migrants excessive fees in contravention of established DOH policy, frequently resulting in a failure to access essential treatment.

The Forced Migration Studies Programme at the University of the Witwatersrand provides the following information on the experiences and challenges experienced by non-nationals living in South Africa in regard to access to health care:

The inability or unwillingness of many hospital staff members to distinguish between different classes of migrants (coupled with xenophobia) often means that migrants, including refugees, are denied access to basic health services or that they are all charged the fees meant for foreigners. Non-nationals may not only be refused services outright, but foreigners—even those paying the additional fees—are frequently made to wait longer than South Africans before being seen and are subject to other forms of discrimination from health care workers. While waiting, one refugee overheard nurses talking about “foreigners taking government money and having too many babies” (Pursell 2004). One researcher reports a hospital staff

¹⁴ Consortium for Refugees and Migrants in South Africa, *Protecting Refugees, Asylum Seekers and Immigrants in South Africa*, 18 June 2008, Lawyers for Human Rights website, pp.8-9 <http://www.lhr.org.za/publications/2008-cormsa-report-protecting-refugees-asylum-seekers-and-immigrants-south-africa> – Accessed 13 November 2008 - Attachment 6

¹⁵ Landau, Loren B. et al 2005, 'Xenophobia in South Africa and Problems Related to it', *Forced Migration Working Paper Series 13*, January, Forced Migration Studies Programme at University of the Witwatersrand website, p.23, http://migration.org.za/wp-content/uploads/2008/03/13_Xenophobia.pdf – Accessed 13 November 2008 - Attachment 7.

¹⁶ Human Rights Watch, 2009 '*No Healing Here: Violence, Discrimination and Barriers to Health for Migrants in South Africa*', p.9, <http://www.unhcr.org/refworld/docid/4b1cc5b52.html> - Attachment 8.

member describing her hospital as “infested” with foreigners... Others suggest that immigrants are often denied full courses of prescribed medicines (Nkosi 2004).¹⁷

The CORMSA reports similar findings:

Many refugees, asylum seekers, and other migrants report being refused access to treatment at public clinics and hospitals. Many face discrimination and ignorance of their rights when they try to access these services.¹⁸

Violence

The Human Rights Watch report, ‘*No Healing Here: Violence, Discrimination and Barriers to Health for Migrants in South Africa*’¹⁹ states:

[even] in the context of a high crime rate in South Africa, migrants are particular targets for violence. The xenophobic attacks of 2008 were the most dramatic, but not the only acts of xenophobic violence, which continue to occur frequently all over the country. Non-citizens are also targets for opportunistic crimes like robbery; a migrant advocate told Human Rights Watch that foreigners are sometimes called “ATMs” because “it is so easy to get cash out of them.”

According to Dr Olive Shisana, CEO and President of the Human Sciences Research Council (HSRC),

[x]enophobia against our fellow brothers and sisters in the African continent is not new in South Africa. ...For quite some time there was internecine conflict between South Africans and Africa fellows, especially those living in townships, where resources are limited.

The report of the HSRC, *Violence and Xenophobia in South Africa: Developing Consensus, Moving to Action* examines trends in xenophobic violence:

[F]irstly, there has been a steady increase in the expression of xenophobic sentiments at both the level of officials within the state, as well as in the popular discourse in the country. Secondly, and perhaps related to the first trend, there has been a steady increase in the number of actual attacks on foreign nationals since 1994. It is important to keep in mind that violence perpetrated against foreign migrants, and particularly Africans, was documented as early as 1994...[w]hile the undocumented status of many migrants may make them particularly vulnerable to exploitation and abuse, it is also clear that actions taken by ordinary and even government officials against perceived “foreigners” has little to do with their legal status (Pillay, S. et al 2008).²⁰

¹⁷ Landau, Loren B. et al 2005, ‘Xenophobia in South Africa and Problems Related to it’, *Forced Migration Working Paper Series 13*, January, Forced Migration Studies Programme at University of the Witwatersrand website, pp.27-28, http://migration.org.za/wp-content/uploads/2008/03/13_Xenophobia.pdf – Accessed 13 November 2008, Attachment 7.

¹⁸ Consortium for Refugees and Migrants in South Africa 2008, ‘Protecting Refugees, Asylum Seekers and Immigrants in South Africa’, p. 9, 18 June, Lawyers for Human Rights website, <http://www.lhr.org.za/publications/2008-cormsa-report-protecting-refugees-asylum-seekers-and-immigrants-south-africa> – Accessed 13 November 2008 - Attachment 6

¹⁹ Human Rights Watch, 2009, ‘No Healing Here: Violence, Discrimination and Barriers to Health for Migrants in South Africa’, UNHCR Refworld, p.10, <http://www.unhcr.org/refworld/docid/4b1cc5b52.html>- Accessed 2 February 2010 - Attachment 8

²⁰ Human Sciences Research Council & High Commission of the United Kingdom 2008, *Violence and Xenophobia in South Africa: Developing Consensus, Moving to Action*, October, p12. http://www.hsrc.ac.za/research/output/outputDocuments/5504_Hadland_ViolenceandxenophobiainSA.pdf – Accessed 13 November 2008 - Attachment 9

Richard Pithouse²¹ indicated in his June 2008 report, *The May 2008 Pogroms: xenophobia, evictions, liberalism, and democratic grassroots militancy in South Africa* that violence against immigrants has been present throughout much of South Africa for a number of years, sometimes with government support or encouragement:

Contrary to much of the discussion in the media this state of affairs is not new. Indeed a month before the recent attacks 30 shacks were burnt and 100 people displaced from the Diepsloot settlement in Johannesburg. When the police eventually arrived their only response was to arrest twenty Zimbabweans for being undocumented. Migrants have been driven out of shack settlements in sporadic conflagrations since October 2001 when hundreds of Zimbabweans were hounded out of the Zandspruit settlement, also in Johannesburg. Three weeks before the attacks in Zandspruit the Department of Home Affairs had announced 'Operation Clean Up' in which people in the settlement were asked to support the Department in 'rooting out illegal immigrants'. Between 600 and 700 people were rounded up and deported to Mozambique and Zimbabwe.²²

The xenophobic attacks in May 2008

The May 2008 violence, "was targeted at non South African nationals, including refugees, asylum-seekers, and migrants from a range of African countries including Zimbabwe, Somalia, Mozambique, Ethiopia, Democratic Republic of Congo, Kenya, Tanzania, Burundi and Rwanda."²³ Documented and undocumented refugees and other legitimate migrants were the victims of property damage, eviction from neighbourhoods and informal settlements.

The UN Office of the Resident Coordinator South Africa reported 62 people were killed, 38,762 people were displaced at the height of the crisis (May-June 2008) and 40,000-50,000 people were repatriated.²⁴

According to Amnesty International, more than 600 people were injured. Amnesty International quotes the South African Task Team of Members of Parliament as saying the:

impact of the violence and attacks was severe as many people were gripped by fear and experienced the trauma of people being evicted from their homes, being physically assaulted, killed and in some instances burnt.²⁵

²¹ Richard Pithouse is currently a part-time lecturer at the Department of Political and International Studies at Rhodes University <http://www.ru.ac.za/politics/staff/aca7demic/richardpithouse> - Accessed 1 February 2010.

²² Pithouse, R. 2008, 'The May 2008 Pogroms: xenophobia, evictions, liberalism, and democratic grassroots militancy in South Africa', Sanhati.com website, 16 June <http://sanhati.com/articles/843/> - Accessed 17 July 2008 - Attachment 10

²³ Amnesty International 2008, *South Africa – "Talk for us please" – Limited options facing individuals displaced by xenophobic violence*, 12 September, AFR 53/012/2008, p.4

<http://www.amnesty.org/en/library/asset/AFR53/012/2008/en/cb3f730e-9617-11dd-a696-b185e906216e/afr530122008eng.pdf> - Accessed 12 November 2008 - Attachment 12

²⁴ UN Office of the Resident Coordinator South Africa 2008, *Situation Report 9 – Violence Against Foreigners in South Africa*, 15 August, ReliefWeb website, p.4

[http://www.reliefweb.int/rw/RWFiles2008.nsf/FilesByRWDocUnidFilename/ASAZ-7HYKL3-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFiles2008.nsf/FilesByRWDocUnidFilename/ASAZ-7HYKL3-full_report.pdf/$File/full_report.pdf) - Accessed 14 November 2008 - Attachment 11

²⁵ Amnesty International 2008, *South Africa – "Talk for us please" – Limited options facing individuals displaced by xenophobic violence*, 12 September, AFR 53/012/2008, Introduction

<http://www.amnesty.org/en/library/asset/AFR53/012/2008/en/cb3f730e-9617-11dd-a696-b185e906216e/afr530122008eng.pdf> - Accessed 12 November 2008 - Attachment 12; and

UN Office of the Resident Coordinator South Africa 2008, *Situation Report 9 – Violence Against Foreigners in South Africa*, 15 August, ReliefWeb website, p.4

Media and academic sources generally agree²⁶ that the wave of violence that broke out between South Africans and immigrants to South Africa in May 2008 was not the first time this type of conflict has occurred. The May 2008 violence gained worldwide attention because it was particularly widespread and brutal, with an estimated 62 dead and an estimated 20,000 to 100,000 displaced within the space of two months.²⁷

Xenophobia, poverty and deficiencies in government service provision were the immediate causes for this violence, possibly fuelled by the increase in Zimbabwean refugees in recent years. *BBC News* indicated in May 2008 that the mobs targeted immigrants and refugees in South Africa because of fears they were “taking jobs from locals and contributing to crime”.²⁸ A large number of refugees and immigrants from Zimbabwe have also been particularly targeted in this violence.

A *CNN News* report from May 2008 noted:

The victims are mainly immigrants and refugees from other parts of Africa, including Zimbabwe, where a devastated economy has sent at least two million people across the border in search of a better life. Some say the attacks stem from a long-standing feeling among locals that the number of immigrants in South Africa results in shortages of jobs and essential needs.²⁹

Xenophobic sentiments extended to South African citizens who were not Zulu. The pro-indigenous, pro-Zulu, anti-immigrant nature of this violence was reported in a variety of sources. For example, *Mail & Guardian Online* published the findings of an inter-ministerial task team reporting to the South African Cabinet that “at least 21 of the 62 people who died in the recent xenophobic violence were South African citizens”.³⁰

Amnesty International reported that inquiries by parliamentary bodies, research institutions and human rights organisations found that factors that contributed to the May 2008 violence include:

strong xenophobic sentiments amongst the South African population; feelings of resentment towards and competition with foreigners over jobs, housing and social services, combined with anger and frustration over the slow pace of delivery of these services and the persistence of high unemployment levels particularly amongst younger people; perceptions of corruption amongst the police service and Department of Home Affairs officials in relation to refugees and migrants, and lack of effective policies on migration.³¹

[http://www.reliefweb.int/rw/RWFiles2008.nsf/FilesByRWDocUnidFilename/ASAZ-7HYKL3-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFiles2008.nsf/FilesByRWDocUnidFilename/ASAZ-7HYKL3-full_report.pdf/$File/full_report.pdf) – Accessed 14 November 2008 - Attachment 11

²⁶ see for example:

Sapa- AFP, ‘Xenophobia death toll hits 62’ 2008, *The Times (SA)*, 31 May

<http://www.thetimes.co.za/SpecialReports/Xenophobia/Article.aspx?id=776700> – Accessed 16 July 2008 – Attachment 13;

Pithouse, R. 2008, ‘The May 2008 Pogroms: xenophobia, evictions, liberalism, and democratic grassroots militancy in South Africa’, Sanhati.com website, 16 June <http://sanhati.com/articles/843/> – Accessed 17 July 2008 – Attachment 10;

Commey, P. 2008, ‘A National Disgrace’, *New African*, no. 475, July, p. 12 – Attachment 14

²⁷ RRT Research & Information 2008, *Research Response ZAF33561*, 22 July Attachment 15

²⁸ SA leader orders army to deploy’ 2008, *BBC News*, 21 May <http://news.bbc.co.uk/2/hi/africa/7412128.stm> – Accessed 16 July 2008 – Attachment 16

²⁹ ‘Violence spreads across South Africa’ 2008, *CNN News*, 23 May

<http://edition.cnn.com/2008/WORLD/africa/05/23/southafrica.violence/index.html> – Accessed 17 July 2008 – Attachment 17

³⁰ ‘Xenophobia deaths: One-third was South African’ 2008, *Mail & Guardian Online*, 12 June

<http://www.mg.co.za/article/2008-06-12-xenophobia-deaths-onethird-was-south-african> – Accessed 16 July 2008 – Attachment 18

³¹ Amnesty International 2008, *South Africa – “Talk for us please” – Limited options facing individuals displaced by xenophobic violence*, 12 September, AFR 53/012/2008,

Post May 2008 Attacks

Sporadic threats of violence and attacks against foreigners continue to be reported since the May 2008 crisis. Indeed, an article dated 21 November 2008 in *The Voice of Cape Town* reports that a panel of refugee advocates and experts have warned that the “violent xenophobic attacks have not been left behind and are likely to recur on a larger scale”.³²

The article quotes Bishop Paul Verryn of the Methodist Church of South Africa:

[i]n the absence of acknowledgement and government recognition of South African xenophobia, the May incidents...would turn out to have been only the tip of the iceberg.

Jonathan Crush, Executive Director of SAMP believes that “[x]enophobic attitudes [in South Africa] are pervasive and deep-rooted, and getting worse.”

Situation Reports published by the UN Office of the Resident Coordinator South report that in August 2008 the Zanokhanyo Retailers Association distributed a letter to the Somali Association of South Africa in Khayelitsha Township “ordering the Somali shop owners to close down their shops by 14 September 2008”³³ and note that, “[a]lthough the number of xenophobic incidents appears to be on the decline, threats are still being made against foreign nationals and fears remains about possible future attacks.”³⁴

Police and the Justice System response

A CORMSA report dated June 2008³⁵ provides the following information on the arrest and detention of non-nationals in South Africa:

Large-scale police raids have resulted in the illegal arrests of South Africans, asylum seekers, refugees and other legal migrants. The raid on the Central Methodist Church in Johannesburg highlighted the abuses and corruption that can take place during such an operation. This operation did not generate a single deportation or criminal conviction.

Police in various urban centres continue to extort bribes from undocumented migrants in systematic and regular – yet illegal – ways. This undermines the SAPS’ capacity to fight crime, pillories the organisation’s reputation and victimises individuals who may in fact be in need of police protection.

According to the South African Human Rights Commission, in a report dated July 2006, allegations were brought to the SAHRC of members of the South African Police Service abusing

<http://www.amnesty.org/en/library/asset/AFR53/012/2008/en/cb3f730e-9617-11dd-a696-b185e906216e/afr530122008eng.pdf> – Accessed 12 November 2008 - Attachment 12

³² Cape Times, ‘Xenophobic attacks likely to recur, panel warns’ 2008, *The Voice of the Cape*, 21 November <http://www.vocfm.co.za/public/articles.php?Articleid=42843> – Accessed 27 November 2008, Attachment 19

³³ UN Office of the Resident Coordinator South Africa 2008, *Situation Report 12 – Violence Against Foreigners in South Africa*, 5 September, UN Office for the Coordination of Humanitarian Affairs website, p.2 ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1093999 – Accessed 14 November 2008

³⁴ UN Office of the Resident Coordinator South Africa 2008, *Situation Report 5 – Violence Against Foreigners in South Africa*, 21 June, ReliefWeb website, p.1 - Attachment 20

[http://www.reliefweb.int/rw/RWFFiles2008.nsf/FilesByRWDocUnidFilename/ASAZ-7FVHZ7-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFFiles2008.nsf/FilesByRWDocUnidFilename/ASAZ-7FVHZ7-full_report.pdf/$File/full_report.pdf) – Accessed 14 November 2008

³⁵ Consortium for Refugees and Migrants in South Africa 2008, *Protecting Refugees, Asylum Seekers and Immigrants in South Africa*, 18 June, Lawyers for Human Rights website, p.7

<http://www.lhr.org.za/publications/2008-cormsa-report-protecting-refugees-asylum-seekers-and-immigrants-south-africa> – Accessed 13 November 2008 - Attachment 6

their power “through arbitrary arrests and detention of foreigners; destruction of legal documents and bribery, corruption and extortion.”

The November 2004 open hearings on xenophobia found that bodies tasked with the protection for foreigners including SAPS “were found to display the highest levels of xenophobia, despite government’s condemnation of it.”

According to the Centre for the Study of Violence and Reconciliation’s report on the SAPS³⁶ published in May 2007, the “black immigrant population is a major target of police abuses in South Africa, which include the denial of policing services... arbitrary arrests and corruption.” The report notes:

Since the political transition of the 1990s there has been a massive growth in immigration to South Africa. Related to corruption in the South African Department of Home Affairs, there is no clear distinction between “legal” and “illegal” immigrants, with many immigrants obtaining their documented status through bribery. In addition to being mandated by law to arrest undocumented migrants, SAPS members are often legitimately suspicious of documented immigrants because they believe that documentation is often illegally obtained. The combination of these factors with pressure on the police to keep up arrests, xenophobic attitudes that stereotype foreigners as being responsible for crime in South Africa, hostility to involvement by foreigners in local economic activity, and the limited protection immigrants have against unfair police actions, creates a situation of systematic abuse of foreigners by the police.

The policing of immigrants is based extensively on a type of profiling in which the police identify suspected illegal immigrants according to their physical features. Sometimes police action is based on the person not having the proper documentation. At other times documents purporting to prove legal residence are torn up or disregarded. Sometimes the victims of these police actions are South Africans, who ordinarily do not carry documentation, and who are then treated as “undocumented immigrants” by the police. Whether the person is in possession of documents or not, police action is often concerned primarily with the potential for soliciting or extorting bribes that is facilitated by the vulnerability of black foreigners, and not substantially concerned with verifying whether they are in South Africa legally or illegally.

Richard Pithouse reports that the South African police force is “systematically corrupt and prone to extorting money from migrants, documented or not, on the threat of arrest and deportation.” He continues:

Migrants to South Africa confront a notoriously ungenerous policy regime that is compounded by a bureaucracy and police force that are both systemically corrupt and prone to extorting money from migrants, documented or not, on the threat of arrest and deportation. There are many cases where South Africans have also been arrested and deported to countries they have never previously visited because they could not speak Zulu well, didn’t have the ‘right’ inoculation marks or were ‘too black.’ If the police suspect that someone may be an ‘illegal immigrant’ and she doesn’t have papers on her she will be detained in a holding cell and then sent to a repatriation centre to await deportation. If she is documented but doesn’t have papers on her she may still end up being deported as it is people picked on suspicion of being illegal that have to prove their legal right to be in the country.

³⁶ Centre for the Study of Violence and Reconciliation 2007, *In Service of the people’s democracy – An assessment of the South African Police Service*, May, pp.106-107 & 124-125, Attachment 21

There is no burden of proof on the state. There is a right to one free phone call from the police holding cells and another from the repatriation centres but that right is routinely denied. Sometimes people whose presence in South Africa is perfectly legal just disappear. Their families only discover what has become of them after they have been deported. One consequence of this is that any one who thinks that they may be under suspicion has to carry their papers with them at all times. The similarity with the apartheid pass system has not escaped the notice of migrants.³⁷

4. Is there evidence suggesting that black Africans who are naturalised South African citizens and economically self sufficient would be less vulnerable to xenophobic violence than refugees (documented or undocumented)? Or would naturalised citizens be equally at risk?

As previously noted there is little direct evidence available on the likelihood of harm to non-indigenous naturalised black South Africans. However, unless the individual was wealthy enough to avoid frequenting public thoroughfares in major towns or cities, townships and public hospitals, it is plausible to infer that they may have a reasonable fear of violence or discrimination at some point in the future, particularly when attempting to access government services such as housing, law enforcement or public health systems.

³⁷ Pithouse, Ricahrd 2008, 'The May 2008 Pogroms: xenophobia, evictions, liberalism, and democratic grassroots militancy in South Africa', *Sanhati*, 16 June <http://sanhati.com/articles/843/> – Accessed 17 July 2008 - Attachment 16

Attachments

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