

Preventing Xenophobia in Africa: What Must the African Union Do?

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Abstract

The issue of xenophobia has, for many years, been one of the pressing challenges in Africa. While South Africa currently appears as a poster-child of this problem in Africa, the issue of xenophobia is not solely a South African problem. Traces of these attacks have long existed since the 1960s with countries such as Ghana and Nigeria raising agitations against each other and occasioning displacements of millions of people. Similar to the South African narrative, the agitations were borne out of a need to create an economic haven, the realisation of which was impeded by the influx of foreign populations. In recent years, the issue of xenophobia has equally resonated in the treatment of Somalis in Kenya following the attacks by the Somali-dominated insurgency group and in the treatment of Rwandan refugees in western districts of Uganda.

While the discourse on xenophobia has focused on the obligation of states to protect non-nationals within their territory, the roles of supranational institutions beyond the state are rarely discussed. Specifically, the role of the African Union as a continental institution saddled with the mandate of promoting human rights, fostering African unity, furthering development and ensuring peace and security on the continent is not often central to the discussion on durable solutions to the problem. This paper considers what relevant institutions within the African Union can do in addressing the issue of xenophobia in Africa.

Keywords: migration, African regional institutions, mass expulsion, foreign population.

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Introduction

In recent years, the issue of xenophobia has become a paradoxical result of globalisation's ideal of free trade and global human rights commitments (Njamnjoh 2006: 1). While governments often pledge openly to ideals of common humanity and commit to fostering free movements of goods and services, national immigration laws speak differently in response to the local communities' insecurities about foreign population influx and the consequences of such influx on access to social security and welfare. In Europe, the treatment of migrants crossing the Mediterranean Sea from Africa, the Middle East and Eastern Europe, as well as the constant writhe by Western European states over the Strasbourg court's immigration policy decisions, evince this paradox and demonstrate the distant reality between international commitment and national implementation.

In Africa, this paradox is equally evident. Colonially imposed borders have become testaments of identity since the independence of many African states. The narrative of the 'foreign-other' which was not an essential component of pre-colonial societal orderings (Arthur 2000: 19) has become a powerful rhetoric for determining access to social security and welfare. In immigration policies, social classifications and behavioural patterns, this narrative has resonated. While South Africa has emerged in recent years as the poster-child of the narrative of the 'foreign-other', it has not been alone in this identity crisis. Since the 1950s, occurrences in several African states have perpetuated this narrative. While much focus has been granted to the obligations of individual states in respecting human rights within its borders, little attention has been paid to the role of supranational institutions that can address the problem of xenophobia on the continent. It is within this gap that the argument of this paper is located. This paper considers what the African Union (AU) can do in addressing the issue of xenophobia in Africa. Before advancing a discourse on the role of the AU, it is significant to analyse the manifestations of xenophobia across several African countries in order to vindicate the need for an African-wide response at the level of the AU.

Manifestation of Xenophobia in Africa

Xenophobia is the perceived fear, hatred or dislike of a non-native or foreigner in a particular country (Centre for Human Rights 2009). The word 'xenophobia' derives from two Greek words *xénos* and *phóbos* which translates into 'fear of a foreigner' (Bordeau 2010: 4). The United Nations

Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (Rapporteur) defines xenophobia as 'a rejection of outsiders' (United Nations General Assembly 1994: para 29). According to the Rapporteur,

[x]enophobia is currently fed by such theories and movements as "national preference", "ethnic cleansing", by exclusions and by a desire on the part of communities to turn inward and reserve society's benefits in order to share them with people of the same culture or the same level of development.

While the notion of xenophobia bears close links to concepts like racism and ethnic intolerance, its semantic distinctiveness lies in the fact that it is rooted in national identity, citizenship and a rejection of foreigners belonging to other borders, states or nations (Commission of the European Communities 1993: 14). Some manifestations of xenophobia include prejudices, attitudinal orientations, and behaviours against a foreigner (International Labour Organisation 2001: 2). Such prejudices, attitudinal orientations and behaviours can be triggered by political incitements, declining economic conditions or concerns relating to national security, particularly in the current era of terror attacks. While foreigners are generally affected, refugees, asylum seekers and undocumented migrants are often the central targets in xenophobic situations. In Africa, some of the evident manifestations of xenophobia have been the expulsion of foreign nationals, threats of expulsion and, in other instances, violent attacks. These manifestations date as far back as the 1960s.

In November 1969, forty-nine days after becoming Ghana's Prime Minister, Kofi Busia introduced the Aliens Compliance Order (the Aliens Order) which sought to expel undocumented aliens. 'The Aliens Order required aliens who lacked work permit [to] get them within a period of two weeks or leave the country' (Gocking 2005: 156). Prior to this time, a general perception of foreigners as the cause of 'large-scale unemployment that had befallen Ghana' had begun to emerge in the country (Aremu and Ajayi 2014: 176). Most of the foreign population were from other West African countries such as Nigeria, Burkina Faso, Togo and Côte d'Ivoire. In 1931, Nigerians constituted the majority of foreigners in Ghana. Their success in running businesses in Ghana led to an influx of other Nigerians to the country. Tensions began to rise in Ghana with the increasing entry of foreigners and the dire socio-economic conditions of Ghanaians. In response to increased

pressure from Ghanaian citizens, certain measures were initiated including the Aliens Order and the Ghanaian Business Promotion (GBP). The GBP sought to reserve certain businesses for Ghanaians (Asamoah 2014: 187). According to Asamoah (2014: 187), '[t]o facilitate Ghanaian business promotion, aliens would be allowed to engage in certain economic activity only if they put in capital of determined amounts.' Oppong (2002: 26) notes that the Aliens Order 'led to the mass exodus of between 900,000 to 1,200,000 individuals from Ghana.' Ghanaians praised the order as a nationalistic initiative to ensure jobs for Ghanaians (Aremu and Ajayi 2014: 176).

In 1972, Uganda expelled thousands of Asians from the country in the face of worsening economic conditions (Escribà-Folch and Wright 2015: 145). News reports (BBC 1972) confirm Hansen's (2000: 198) recount that 'all Asians from Britain, India, Pakistan, Kenya, Tanzania and Zambia were told they had three months to leave Uganda.' Following the expulsions, the businesses owned by these foreigners were expropriated, however, the economic downturn of the country was not salvaged (Stokes 2009: 187).

In 1978, Gabon took a decision to expel all Beninese from the country (Henckaerts 1995: 16). The decision was premised on an alleged aspersion on President Bongo and the people of Gabon by President Kérékou of Benin in July 1978 (Gray 1998: 396). Fifteen months before this time, in May 1977, Kérékou had accused officials of Gabon of a foiled mercenary coup that sought to oust him from power and told African leaders that he would consider anyone who attended the regional summit in Libreville a traitor (Gray 1998: 396). In reaction, Gabon banned Beninese from coming into the country. Gray (1998: 396) notes that 'the person of Bongo and the image of the state were [...] merged in the minds of many Gabonese citizens.' In July 1978, when President Kérékou restated his accusation before Bongo at the Summit of the Organisation of African Unity (OAU) in Sudan, President Bongo became enraged (Gray 1998: 396). In communication with the Chairman of the OAU, President Bongo stated that 'the anger of an entire people, which has been controlled for a whole year, literally exploded after the verbal vulgarities and insanities uttered at the OAU' (Gray 1998: 396). Subsequently, about 9 000 Beninese were expelled from the country (Henckaerts 1995: 16). According to Henckaerts, 'the sole factor of being a Benin national triggered the expulsion decisions without an examination of individual behaviour' (Henckaerts 1995: 17). Gray (1998: 397) notes that

although the expulsion had implications on the economy and on the education system of Gabon, 'the Gabonese state was able to avert more serious political unrest through an exercise in "citizenship promotion".'

Due to declining economic conditions in the early 1980s following a period of economic boom in the 1970s, Nigeria expelled over 2 million foreigners from the country in 1983 (Aremu 2013: 340). More than a million of these foreigners were from Ghana (Otoghile and Obakhedo 2011: 139). In addition to the decline in economic conditions, another key reason given for the expulsion of foreigners from the country was the involvement of foreigners in crime in the country (Aremu 2013: 341). In 1985, another wave of expulsion was carried out in which 300 000 Ghanaians were expelled from the country (Otoghile and Obakhedo 2011: 139-140). As with the first wave of expulsions, the worsening economic conditions constituted the basis for this expulsion (Otoghile and Obakhedo 2011: 139).

In response to the declining economic situation in Côte d'Ivoire in the 1990s, former President Bédié propagated the idea of *ivoirité* which sought to weave Ivoirian identity into political and economic access (Kimou 2013: 18-19; Wiafe-Amoako 2015: 82-83). The institutionalisation of Ivoirian identity fuelled resentments against foreigners and divided the Ivorian society. In 1999, between 8000 and 12000 nationals of Burkina Faso were expelled following tensions between Ivoirians and Burkinabe farmers (Human Rights Watch 2001: 4).

In 2004, an attempted coup against the President of Equatorial Guinea, allegedly led by a mercenary, spurred a clamp-down on foreigners in the country (Shirbon 2004). Foreigners from several African countries were detained, intimidated and some were expelled. Government officials raised suspicions against foreigners and Equatorial Guineans were called upon to be 'vigilant with foreigners, regardless of colour, because [their] target [...was] the wealth of Equatorial Guinea, the oil' (Roberts 2009: 192-193). An estimate of about 1 000 foreigners from other African countries, mostly from Cameroon, were expelled from the country (Human Rights Watch 2009: 81). Equatorial Guineans who did not belong to the law enforcement agency of the state were permitted to arbitrarily arrest those suspected to be illegal foreigners (Human Rights Watch 2009: 81). In 2007, the government banned other West African nationals from 'owning grocery stores' in the country, and such stores were either taken over by the government or closed (IRIN News 2008).

The rhetoric that citizens of the Democratic Republic of Congo (Congo Kinshasa) were stealing natural resources that belonged to Angola was at the root of several recent mass expulsions of Congolese from Angola. In 2004, the Angolan government expelled an estimated 100 000 Congolese from Angola (Siegel 2009: 23). Over 160 000 Congolese were expelled between December 2008 and December 2009 (Adebajo 2011: 91). Perpetuating the rhetoric in question, the Angolan Foreign Minister stated that Angola 'will never give up its right to protect its natural resources and its right to repatriate citizens who are acting in a way which do not benefit the country' (Reliefweb 2009).

In 2009, the government of Congo Kinshasa expelled 50 000 Angolans in retaliative response to the mass expulsion of Congolese from Angola. This was done 'amid a rising wave of popular anger over the humiliating treatment of those expelled [by Angola]' (Human Rights Watch 2012: 11).

The history of the xenophobic violence in South Africa, although arguably rooted in the legacies of apartheid and the failure of the post-apartheid government in effectively accommodating foreigners (Hanekom and Webster 2009/2010: 105; Adam and Moodley 2013: 37), dates back to 2008 with the waves of attacks against foreigners seen in various locations across South Africa (Duponchel 2013: 5). The first known attack was on 11 May 2008 in the Alexandria settlement in Johannesburg. By the end of May, over 60 people had been killed and tens of thousands were displaced (Tafira 2011: 114; Hankela 2014: 75). In 2015, a new wave of attacks against foreigners were incited by the Zulu King and followed the death of a South African teenager at the hands of a Somali. The rhetoric that underscored the 2008 attacks – that foreigners were stealing jobs and committing crimes – resonated in the new wave of attacks (Mwakikagile 2008: 335) that resulted in the loss of properties owned by foreigners, the death of about 7 people and the displacement of thousands of foreigners (Essa 2015).

In 2009, Burundi expelled between 800 and 1 200 foreigners from the country (Jeune Afrique 2009). These foreigners were mostly from Rwanda and Congo Kinshasa, however others from Tanzania, Uganda and Senegal were equally affected. The expulsion was premised on the need to address crime in the state. A police representative argued that it was a routine exercise aimed at expelling irregular migrants who were largely responsible for crimes in the state (Jeune Afrique 2009).

In 2013, the government of Tanzania expelled close to 11 000 undocumented foreigners in an effort to rid the country of criminal elements (Ghosh 2013). Prior to the expulsion, the President of Tanzania had given a two-week ultimatum to undocumented foreigners to leave the country. The decision was informed on two grounds. First, on the complaint 'from villagers over acts of armed robbery, bus attacks and kidnaps attributed to illegal immigrants in the area [of Kagera]' (Naluyaga 2013) and, second, on the ground that undocumented foreigners 'overstretched government's ability to offer services to its people' (Naluyaga 2013). Of those expelled were 300 from Uganda, 4 100 from Burundi and 6 400 from Rwanda (Ghosh 2013).

With the recent wave of terrorist attacks in Kenya by the Somali al-Shabaab group, negative reactions against Somalis have arisen in the country (Harper 2010; Wambua-Soi 2012; Hatcher 2015). Following the 2013 Westgate attacks, Kenyan government authorities threatened to close down the Dadaab camp which housed about half a million Somali refugees. In 2014, approximately 4 000 Somalis were arrested in Operation *Usalama* Watch initiated by the government with the view to counter terrorism and address security concerns in the state (Boru-Halakhe 2014). Buchanan-Clarke and Lekalake (2015) observe that '[i]n Kenya's attempts to address the threat of violent extremism, the Somali Kenyan community is often stigmatized.'

The Republic of Congo (Congo Brazzaville) in many respects shares close ties with Congo Kinshasa. Aside from the name, the Congo River and language, the countries share ethnic and cultural bonds. However, this has not assuaged 'foreign-fears' premised a distinct border. In 2014, Congo Brazzaville initiated an operation dubbed Operation *Mbala ya bakolo*, literally translating to 'slap of the elders' (Amnesty International 2015: 9). The essence of this operation was to rid the country of criminal elements and, although it was regarded as a 'general operation' (Amnesty International, 2015, 14), over 50 000 citizens of the Democratic of Republic of Congo were expelled (Reuters 2015). While acknowledging the repatriations, a government spokesperson emphasised that 'the operation continues' as not all that should be repatriated has been found (Amnesty International 2015: 17).

In June 2015, suicide bomb attacks in N'Djamena by Boko Haram resulted in the death of 27 people and left approximately 100 others injured (Channels Television 2015). In response to these attacks, one of the measures

implemented by the Chadian government was the expulsion of foreigners. In the month of June, the Chadian military expelled 200 to 300 Cameroonians from the country in a 'clean up campaign against undocumented foreigners' (Ernest 2015). In July 2015, over 2 000 undocumented Nigerians were also expelled from Kousseri in Chad (Telegraph 2015).

In the case of Ghana, Nigeria, Angola, Uganda and South Africa xenophobic reactions were spurred by economic considerations. In Chad and Kenya, xenophobic prejudices were informed by the war on terror. In Cote d'Ivoire, Gabon and Equatorial Guinea, politics as well as economic considerations triggered xenophobic expulsions. In Tanzania, Burundi and Congo Brazzaville, xenophobic actions were largely spurred by the rhetoric that foreigners were committing crime. In Congo Kinshasa, the expulsion of Angolans was political. While various reasons underpin xenophobic reactions in these countries, a central theme which resonates is that the issue of xenophobia is not a new phenomenon in Africa. As a problem that is not country-specific, the role of the AU as an institution saddled with the mandate of fostering cohesion among African states and promoting peace and security, is imperative. In light of this fact, the next section considers the role that various institutions within the AU can play in addressing the issue of xenophobia.

The Role of the African Union

As the regional institution mandated to advance cooperation among African states and between Africa and the international community, the AU has the capacity to be a significant actor in addressing xenophobia. Under the AU Constitutive Act, the AU is mandated to promote human rights, sanctity of life, and peaceful co-existence and cooperation between African states, as well as position the continent at an advantage within the international community. In the past, the AU has, through norms and institutions, made significant strides in fostering these goals. The AU has taken significant initiatives in relation to peace and security, economic development, international cooperation, institutionalisation of democracy and promotion of human rights in Africa. In 2013, the African Union developed a policy agenda for the continent premised upon the need to build an integrated Africa and to rightly position Africa in global governance (Makinda et al 2016: 183). In the Solemn Declaration, AU member states committed to 'continue the global struggle against all forms of racism and discrimination, xenophobia and related intolerances' (African Union 2013: art H(i)). This

commitment was further emphasised in the 2015 policy document created by the AU to foster this Solemn Declaration (African Union Commission 2015). However, while the Solemn Declaration and the Policy Document iterate the need for states to combat xenophobia by ensuring that Africa takes in global governance, the roles of relevant institutions within the African Union in fostering this goal are not specifically mentioned. This paper discusses the roles which relevant institutions within the AU can perform in addressing the issue of xenophobia on the continent.

The Assembly of Heads of States and Governments

The Assembly of Heads of States and Governments (the Assembly) is the highest political organ of the AU and is saddled with the mandate of advancing the goals of the AU. In line with the Constitutive Act, the Assembly is granted the responsibility of making policies and decisions, determining the AU's budget, establishing and directing other organs, appointing key authorities of the AU Commission (AUC) and the African Court of Justice, delegating its functions where appropriate and monitoring compliance with its decisions (Constitutive Act of the AU 2000: art 9). Significantly, the AU has adopted numerous treaties within the African human rights system. While still named the Organisation of African Unity (OAU) in 1981, it adopted the African Charter on Human and Peoples' Rights (the African Charter), which is still the main regional human rights instrument. In commemoration of the 50th year of African integration, the Assembly adopted the Solemn Declaration. The declaration served as a springboard for the development of the Agenda 2063 policy document, which highlights the aspirations of the African Union over the next 50 years from 2013. One of the aspirations emphasised in the policy document is the need to combat the issue of xenophobia. While the Assembly has taken steps in developing norms for the prevention of xenophobia, this paper argues that in view of its broad mandate, the Assembly can do much more. For example, one significant role it could play is to cooperate with key organs on the continent with exclusive mandates on human rights protection, peace and security by fostering compliance of Member States with their decisions. Such institutions include: the African Union Commission (AUC), African Commission on Human and Peoples' Rights (ACHPR), the Pan-African Parliament (PAP), the Economic, Social and Cultural Council (ECOSOCC) and the African Peace and Security Architecture (APSA). In addition, the Assembly can adopt a common position on xenophobic violence on the

continent in which it should emphasise non-cooperation with states that fail to effectively address xenophobia.⁷

The African Union Commission

As the secretariat of the AU, the AUC is the nerve centre of the AU. Headed by a Chairperson, the AUC has nine departments included among which is the Department of Political Affairs (DPA). Within the DPA, the Humanitarian Affairs, Refugees and Displaced Persons Division (HARDPA) is particularly relevant as the unit with a mandate over issues of migration. One significant role which the AUC can play is in facilitating regional dialogues on the issue of xenophobia. These dialogues should be aimed at raising awareness on the issue, promoting traditional African values such as *ubuntu*,⁸ sharing practices on how the issue of xenophobia can be addressed and drawing the attention of states and relevant stakeholders to xenophobic hotspots, orientations and attitudes. The AUC should also develop advocacy pamphlets to foster regional sensitisation on African shared values of humanity and on the rights of migrants, asylum seekers and refugees. In collaboration with the ACHPR, the HARDPA should develop a model for states to utilise in developing national policies on the issue of xenophobia. This model policy should highlight the ways through which xenophobia manifests, emphasise respect for human rights obligations and incorporate a rights-based approach to migration. Moreover, the HARDPA should disseminate information on xenophobic attacks through the use of news media and recommend urgent measures that states should adopt in addressing the issue in places around the continent where xenophobia arises.

The African Commission on Human and Peoples' Rights

⁷ The African Union Assembly has initiated common positions in the past in relation to issues such as climate change and child marriage. In 2009, it initiated a common position on non-cooperation with the International Criminal Court. *See Decision on the Meeting of African State Parties to the Rome Statute of the International Criminal Court (ICC)*, adopted by the 13th Ordinary Session of the Assembly in Sirte, Libya, Assembly/AU/Dec 245(XIII) (3 July 2009), rev. 1 (Tladi 2009: 57).

⁸ The concept of Ubuntu embodies the idea that the humanness of a person is premised on that of others. According to Cornell and Van Marle, ubuntu embodies "the notion that one's humanness can be diminished by the violent actions of others, including the violent actions of the state" (Cornell and Van Marle 2005: 207).

Constituted in 1987, the ACHPR is the primary regional organ, the mandate of which is to promote and protect human rights in Africa. In 1996, the ACHPR decided on a communication against Zambia following the country's decision to expel illegal foreigners resulting in the exile of 517 West African nationals from the country (*Rencontre Africaine pour la Défense des Droits de l'Homme v Zambia* 2000). In its decision, the ACHPR emphasised that 'mass deportation of the individuals in question here, including their arbitrary detention and deprivation of the right to have their cause heard, constitutes a flagrant violation of the Charter' (*Rencontre Africaine pour la Défense des Droits de l'Homme v Zambia* 1996: para 31).

Following the xenophobic violence in South Africa, the ACHPR adopted a resolution against this violence (*Resolution Condemning the Xenophobic Attacks in the Republic of South Africa* 2015). In the May Resolution, the ACHPR requested that the South African government ensure that mechanisms are put in place to prevent xenophobia from reoccurring. The ACHPR further stressed the need for investigation and urged the state to respect its obligations under the African Charter.

As a pivotal institution in the promotion of human rights in Africa, the ACHPR has an essential role to play in addressing issue of xenophobia in Africa. This paper argues that one of the ways through which the ACHPR can bring an end to the issue of xenophobia is through standard-setting. The decisions, resolutions and comments of the ACHPR have, over time, become useful resources for civil society advocacy and for state action plans. The ACHPR can leverage on this fact in developing a report on a rights-based approach to immigration laws and policies in Africa.⁹ In this study, the ACHPR should assess national laws and provide recommendations on how these laws could be aligned with international human rights standards. The ACHPR should also develop a General Comment on the issue of xenophobia. This General Comment can be made with reference to the provision of article 19 of the African Charter which emphasises the rights of 'all peoples' to 'enjoy the same respect and [...] have the same rights' (*African Charter* 1981: art 19). The ACHPR should also undertake promotional visits to states where xenophobic tendencies and attitudes are observed in order to sensitise

⁹ In 2014, the African Commission approved a study undertaken by one of its special mechanisms on the right to nationality. (*African Commission on Human and Peoples' Rights* 2014).

authorities on viable measures to ensure that foreign nationals are adequately protected.

The Economic, Social and Cultural Council

As a platform through which various 'social and professional groups' (Constitutive Act of the AU 2000: art 22(1)) can engage in the activities of the AU (Viljoen 2012: 206-208), the ECOSOCC has the capacity to be a significant actor in addressing the issue of xenophobia in Africa. The ECOSOCC is designed as an 'advisory organ' of the AU (Constitutive Act of the AU 2000: art 22(1)). In this position, the ECOSOCC is involved in realising the AU objectives, conducting studies required by AU institutions, making recommendations, promoting human rights and democracy, fostering popular participation and advancing collaboration between the AU and civil society organisations (Statute of the Economic Social and Cultural Council of the African Union 2004: art 7(1-8)). Considering its function, one of the roles that the ECOSOCC can perform in addressing the issue of xenophobia is to host sessional meetings in which relevant stakeholders, including states and the civil society, meaningfully engage in effective dialogue on combatting xenophobia nationally and regionally.

The Pan-African Parliament

Although initially created to foster economic integration on the continent, the PAP has assumed a broader function over time (PAP Protocol 2001; Dinokopila 2013: 303-304). The PAP Protocol which sets out the scope of PAP's competence emphasises that PAP developed from a need to 'provide a common platform for African peoples and their grass-roots organizations to be more involved in discussions [on] challenges facing the Continent' (PAP Protocol 2001: preamble). Some of the functions of the PAP are to foster economic integration, promote human rights, democracy and good governance and serve as a focal point for engagement with regional economic communities (RECs) and their parliaments (Constitutive Act of the AU 2000: art 3). In view of its mandate, one of the roles which PAP can perform in addressing the issue of xenophobia is to engage with RECs on legislative, administrative and other measures that can be adopted in combatting xenophobia in states within the sub-regions. As these RECs, such as ECOWAS, EAC and SADC, have a strong presence in the AU, the PAP should engage them in actualising regional strategies for tackling the issue.

The African Peer Review Mechanism

As a 'peer pressure' platform that allows African leaders to assess their commitment to governance, democracy and development, the African Peer Review Mechanism (APRM) has a relevant role to perform in addressing xenophobia in Africa. The APRM is a voluntary self-assessment mechanism that is conducted under the aegis of the AU (Killander 2008: 41). Member states of the AU voluntarily accede to the process. The APRM is constituted by three institutions: the Committee of Participating Heads of State and Government (APRF), the Panel of Eminent Persons (PEP), the APRM Secretariat and the Country Review Mission Team (CRMT) (Africa Peer Review Mechanisms: Base Document 2003). While the CRMT conducts country visits and produces reports on the progress made by states in line with its commitments on governance, democracy and development, the PEP oversees the review process, considers recommendations of the CRMT and makes recommendations to the APRF. The APRF is the forum for political discussion in which states under review are urged to act in line with the recommendations gleaned from the review process.¹⁰ While the CRMT and PEP are essential in addressing the xenophobia, this paper argues that the APRF is particularly significant as it serves as a platform for constructive dialoguing between heads of states and governments (Turianskyi, 2013).

The African Peace and Security Architecture

The APSA is the main institution responsible for the protection of peace and security on the continent and is mandated to manage and resolve conflicts. Within APSA, there are five main pillars, these are: the Peace and Security Council (PSC), the Continental Early Warning System (CEWS), the Panel of the Wise (Panel), the African Standby Force and the Special Fund (PSC Protocol 2002). Two of its pillars relevant to addressing the issue of xenophobia in Africa are the CEWS and the Panel. The CEWS is a system designed to prevent situations of conflict by flagging potential conflict hotspots. In relation to xenophobia, the CEWS should monitor xenophobic orientations that may degenerate into conflict if not given proper attention. The CEWS should give detailed reports of such situations to the PSC for further actions. The significance of the Panel resonates from the motivation for its establishment (Jegade 2009: 416). Rooted in African traditions of

¹⁰ States are assessed on compliance with the values agreed upon in the New Partnership for Africa Development Declaration (NEPAD Declaration).

deference to elders (Viljoen, 2012, 193), the Panel is required to give advice to the PSC and AUC on matters bothering on peace and security on the continent (PSC Protocol, 2002, art 11(3)). An important role which the Panel can perform in addressing the issue of xenophobia is to advise the PSC and states on how xenophobic-related conflicts can be prevented.

Conclusion

The issue of xenophobia is a pressing challenge that cuts across human rights, governance, development and democracy in Africa. As it is not specific to one African state, an Africa-wide response is essential. Within this context, the role of the AU is primary. This paper elaborates on the role of seven institutions within the AU that are relevant to addressing the issue of xenophobia in Africa.

With regards to the Assembly, this paper argues that the Assembly can develop a common position on xenophobic violence on the continent, in which it should emphasise non-cooperation with states that fail to effectively address xenophobia. The Assembly should also cooperate with the decisions and recommendations from other AU institutions, such as the ACHPR, in respect to its own decisions and recommendations. With respect to the AUC, this paper argues that it can facilitate regional dialogues on the issue. This paper also argues that the AUC should develop advocacy pamphlets for regional sensitisation on the issue of xenophobia. In addition, the AUC should develop a model policy for states to utilise in developing national policies on the issue of xenophobia. With regards to the ACHPR, this paper argues that the ACHPR should develop a report on a rights-based approach to immigration laws and policies in Africa and also develop a General Comment on the issue of xenophobia. In relation to ECOSOCC this paper argues that ECOSOCC should host sessional meetings with relevant stakeholders for effective dialoguing on measures to combat xenophobia nationally and regionally. With respect to the PAP, this paper argues that the PAP should engage with RECs leveraging on their strong sub-regional presence in addressing the issue of xenophobia. With regards to APRM, this paper argues that while the CRMT and the PEP are important, the APRF is particularly important in light of its ability to exert 'influence' or 'peer pressure'. In relation to APSA, this paper argues that the PSC and CEWS have significant roles to perform, arguing that the CEWS should monitor xenophobic orientations that may degenerate into conflicts if not given the

needed attention. This paper argues that the Panel should advise the PSC and states on the prevention of xenophobic-related conflicts.

References

- Adam, H and Moodley, K. 2013. *Imagined Liberation: Xenophobia, Citizenship and Identity in South Africa, Germany and Canada*. Stellenbosch: African Sun Media.
- Adebajo, A. 2011. *UN Peacekeeping in Africa: From the Suez Canal to the Sudan Conflicts*. Colorado: Lynne Rienner Publishers.
- 'Africa Peer Review Mechanisms (APRM): Base Document'. 2003. In: Heyns, C. and Killander, M. 2013. *Compendium of Key Human Rights Documents in African Union*. Pretoria: Pretoria University Press.
- African Commission on Human and Peoples' Rights. 2014. *The Right to Nationality in Africa*. Addis Ababa, African Union Commission.
- African Union Commission. 2015. *Agenda 2063: The Africa We Want*. Addis Ababa: African Union Commission.
- African Union. 2013. *50th Anniversary Solemn Declaration*. Addis Ababa: African Union Commission.
- Amnesty International, 2015. 'Operation Mbata Ya Bakolo: Mass Expulsions of Foreign Nationals in the Republic of Congo'. London: Amnesty International.
- Aremu, OJ. 2013. 'Responses to the 1983 Expulsion of Aliens from Nigeria: A Critique'. *African Research Review* 7(3) 340.
- Aremu, OJ and Ajayi, TA. 2014 'Expulsion of Nigerian Immigrant Community from Ghana in 1969: Causes and Impact'. *Developing Country Studies* 4(10) 176.
- Arthur, JA. 2000. *Invisible Sojourners: African Immigrant Diaspora in the United States*. Connecticut: Greenwood Publishing Group.
- Asamoah, OY. 2014. *The Political History of Ghana (1950-2013): The Experience of a Non-conformist*. Bloomington: AuthorHouse.
- Bordeau, J. 2010. *Xenophobia: The Violence of Fear and Hate*. New York: Rosen Publishing Group.

- Centre for Human Rights. 2009. *The Nature of South Africa's Legal Obligations to Combat Xenophobia*. Pretoria: Centre for Human Rights.
- Commission of the European Communities. 1993. 'Legal Instruments to Combat Racism and Xenophobia'. Luxemburg: Office for Official Publications of the European Communities
- Constitutive Act of the African Union*. Adopted 11 July 2000 (entered into force 26 May 2001).
- Duponchel, M. 2013. 'Who's the Alien? Xenophobia in Post-apartheid South Africa'. United Nations University World Institute for Development Economics Research Working Paper No 2013/003 (forthcoming). 5.
- Dinokopila, BR. 2013. 'The Pan-African Parliament and African Union Human Rights Actors, Civil Society and National Human Rights Institutions: The Importance of Collaboration'. *African Human Rights Law Journal* (13) 302.
- Escribà-Folch, A and Wright, J. 2015. *Foreign Pressure and the Politics of Autocratic Survival*. Oxford: Oxford University Press.
- Gocking, R. 2005. *The history of Ghana*. Westport: Greenwood Publishing Group.
- Gray, CJ. 1998. 'Cultivating Citizenship through Xenophobia in Gabon, 1960-1995' *Africa Today* 45(3/4) 389.
- Hanekom, B and Webster, LA. 2009/2010. 'The Role of South Africa's Government in the Xenophobic Violence of May 2008'. *University of Pennsylvania Journal of Law and Social Change* (13) 91.
- Hankela, E. 2014. *Ubuntu, Migration and Ministry: Being Human in a Johannesburg Church* Leiden: Koninklijke Brill. 75.
- Hansen, R. 2000. *Citizenship and Immigration in Post-war Britain*. Oxford: Oxford University Press.
- Henckaerts, JM. 1995. *Mass Expulsion in Modern International Law and Practice*. Leiden: Martinus Nijhoff Publishers.

- Human Rights Watch. 2001. *The New Racism: The Political Manipulation of Ethnicity in Côte d'Ivoire*. New York: Human Rights Watch Publications.
- Human Rights Watch. 2009. *'Well Oiled: Oil and Human Rights in Equatorial Guinea'*. New York: Human Rights Watch Publications.
- Human Rights Watch. 2012. *"If You Come Back We Will Kill You": Sexual Violence and Other Abuses Against Congolese Migrants during Expulsions from Angola*. New York: Human Rights Watch Publications.
- International Labour Organisation. 2001. *'International Migration, Racism, Discrimination and Xenophobia'*. International Organization for Migration and Office of the United Nations High Commissioner for Human Rights.
- Jegede, A. 2009. 'The African Union Peace and Security Architecture: Can the Panel of the Wise Make a Difference?' *African Human Rights Law Journal* 9(2) 409.
- Killander, M. 2008. 'The African Peer Review Mechanism and Human Rights: The First Reviews and the Way Forward'. *Human Rights Quarterly* 30(1) 41.
- Kimou, SA. 2013. 'The Politics of "Othering": Will Ethnic Polarization Destroy Côte d'Ivoire?' MA Thesis (Unpublished) Washington DC: Georgetown University.
- Makinda, SM. Okuma, FW. and Mickler, D. 2016. *The African Union: Addressing the Challenges of Peace, Security, and Governance*. Oxfordshire: Routledge.
- Mwakikagile, G. 2008. *African Immigrants in South Africa*. Pretoria: New Africa Press.
- Njamnjoh, FB. 2006. *Insiders and Outsiders: Citizenship and Xenophobia in Contemporary Southern Africa*. London: Zed Books.
- Otoghile, A and Obakhedo, O. 2011. 'Nigeria-Ghana Relations from 1960 to 2010: Roots of Convergence and Points of Departure'. *African Research Review* 131.

- Protocol to the Establishment of the Peace and Security Council of the African Union (PSC Protocol)*. 2002.
- Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament (PAP Protocol)*. 2001.
- Rencontre Africaine pour la Défense des Droits de l'Homme v Zambia*. 2000. AHRLR 321 (ACHPR 1996).
- Resolution Condemning the Xenophobic Attacks in the Republic of South Africa*. 2015. (ACHPR/Res. 304 (LVI)).
- Roberts, A. 2009. *The Wonga Coup: Simon Mann's Plot to Seize Oil Billions in Africa*. London: Profile Books.
- Siegel, D. 2009. *The Mazzel Ritual: Culture, Customs and Crime in the Diamond Trade* Dordrecht: Springer.
- Statute of the Economic, Social and Cultural Council of the African Union*. 2004. Adopted by the AU Assembly at its Third Ordinary Session. 6-8 July 2004. Addis Ababa, Ethiopia.
- Stokes, J. 2009. *Encyclopedia of the People of Africa and the Middle East*. New York: Infobase Publishing.
- Tafira, K. 2011. 'Is Xenophobia Racism?' *Anthropology Southern Africa* 34: 114.
- 'The African Charter on Human and Peoples' Rights'. In: Heyns, C & Killander, M. 2013. *Compendium of Key Human Rights Documents in African Union*. Pretoria: Pretoria University Press.
- Tladi, D. 2009. 'The African Union and the International Criminal Court: The Battle for the Soul of International Law'. *South African Yearbook of International Law* (4) 57.
- Turianskyi, Y. 2013. 'The African Peer Review Mechanism Ten Years Old: How Can it be Strengthened?' South African Institute of International Affairs Policy Note 2.
- United Nations General Assembly 49th sess. 1994. Report on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, prepared by the Special Rapporteur of the Commission on Human Rights in accordance with Commission on Human Rights

resolution 1993/20 and 1994/64 and Economic and Social Council decision 1994/307. Annex, note by the Secretary General UN Doc A/49/677 (23 November 1994).

Viljoen, F. 2012. *International Human Rights Law in Africa*. Oxford: Oxford University Press.

Wiafe-Amoako, F. 2015. *Africa: 2015-2016*. Maryland: Rowman and Littlefield.

News Articles

'Asians given 90 days to leave Uganda'. *BBC News* 7 August 1972.

Boru-Halakhe, A. 'The precarious fate of Kenyan-Somalis' *Al Jazeera* 19 April 2014.

Buchanan-Clarke, S and Lekalake, R. 'Is Kenya's anti-terrorist crackdown exacerbating drivers of violent extremism?' *Afrobarometer* 2 July 2015.

'Cameroon 'expels 2,000 Nigerians' in fight against Boko Haram' *Telegraph* 31 July 2015.

'Chad says Boko Haram responsible for Bombs that killed 27' *Channels Television* 15 June 2015.

De 800 à 1.400 étrangers expulsés, surtout Congolais et Rwandais *Jeune Afrique* 19 February 2009.

'Equatorial Guinea: oil money draws sub-Saharan Africans' *IRIN News* 22 October 2008.

Ernest, S. 'Chad expels dozens of Cameroonians' *Cameroon Concord* 28 June 2015.

Essa, A. 'Is South Africa taking xenophobia seriously' *Al Jazeera* 30 April 2015.

Ghosh, P. 'A tale of two crisis: illegal immigrants in Tanzania and Malaysia' *International Business Times* 3 September 2013.

Hatcher, J. 'After Garissa, Kenyans and Somalis face divided future' *Newsweek* 7 April 2015.

Harper, M. 'Somalis in Kenya: "they call us ATM machines"' *African Arguments* 7 December 2010.

- Naluyaga, R. 'Dar defends move to expel Rwandans' *The East African* 17 August 2013.
- 'Nearly 50,000 expelled Angolans near DR Congo border: minister' *Reliefweb* 27 October 2009.
- Shirbon, E. Equatorial Guinea a risky magnet for migrants *IOL news* 9 September 2004.
- Wambua-Soi, C. 'Rising xenophobia against Somalis in Kenya' *Al Jazeera* 20 November 2012.