

# VIOLATION OF HUMAN RIGHTS OF DISADVANTAGED AND VULNERABLE REFUGEES

## VICTIMS OF XENOPHOBIC ATTACKS IN SOUTH AFRICA

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**Abstract:** This paper discusses violations of the civil and political, social and economic, and cultural rights of refugees and asylum seekers in South Africa during and after the xenophobic violence of May 2008 and analyzes the response of the South African government in light of its obligations under national and international law. This paper focuses primarily on the impact of the violence and its aftermath on refugees and asylum seekers in and around Cape Town, particularly those housed in the Youngsfield and Blue Waters safety sites established in response to the xenophobic attacks and finally evacuated in April and May 2010.

**Keywords:** Blue Waters, human rights, refugees, South Africa, xenophobia, Youngsfield

### I. INTRODUCTION

In May 2008 foreign nationals from a number of African countries were victims of violent xenophobic attacks by local South Africans in at least 135 locations across South Africa. The attacks led to the 62 deaths, the rape of many refugee women and girls, the displacement of over 100,000 people, and millions of rand in damage and loss of property [1].

Most of the victims belonged to already vulnerable groups, including women, children and poor families; the majority had previously been victims of massive atrocities, gross human rights violations and gender-based violence in their home countries. Many of those targeted in the xenophobic attacks had been forced to flee war-torn areas of the Great Lakes region of Africa, including the eastern Democratic Republic of Congo (DRC), Rwanda and Burundi, as well as the Horn of Africa region, particularly Somalia and South Sudan.

Refugees and asylum seekers already traumatised by the conditions that forced them to flee their countries

of origin arrived in South Africa hoping to rebuild their lives only to find growing xenophobia in South African communities, including serious criminal violence and discrimination that found its worst expression in the May 2008 attacks.

In response to the massive displacement that resulted from the attacks, the South African government set up temporary safety sites to contain the crisis and partnered with the United Nations High Commissioner for Refugees (UNHCR) to identify possible solutions for the victims. In September 2008, judging that the conditions of widespread public violence that had led to the creation of the safety sites had stabilized sufficiently to allow the return of the displaced to local communities, the South African government closed all safety sites across Cape Town. As part of the closure, all food and electricity supplies were cut off.

Were these measures in compliance with the South African Constitution, national legislation and the international human rights standards South Africa has signed and ratified? Is the treatment meted out to refugees from Africa in compliance with the spirit of *Ubuntu* that inspires the South African Constitution? Are the measures taken by the government and the UNHCR sustainable enough to protect the victims, prevent further attacks and guarantee their basic human rights?

This paper analyzes South African compliance with national, regional and international human rights standards protecting refugees and asylum seekers. To this end, the three generations of human rights will be described and analyzed for a better and specific understanding of the rights at stake. This paper is therefore subdivided into three different sections: (1) civil and political rights; (2) social and economic rights; and (3) cultural rights.

## II. CIVIL AND POLITICAL RIGHTS

### A. *The xenophobic violence of May 2008*

South Africa emerged after the 1994 elections as a beacon of human rights on the African continent, with a progressive and ambitious Constitution founded on principles of human rights, equality and dignity. The democratic reforms implemented after 1994 included the development, in a transparent and consultative process with the input of a wide variety of stakeholders, of a strong refugee protection framework in line with both the international and regional refugee conventions (the 1951 United Nations Refugee Convention and its 1976 Optional Protocol as well as the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa ["OAU Convention"]) and the progressive democratic reforms of the post-apartheid era [2].

Since the fall of apartheid, South Africa has shifted from being a refugee-sending country to one that draws tens of thousands of asylum seekers a year [3], forced to flee a combination of failed governments, war, famine and economic hardship and enticed by the prospect of stability and democracy in South Africa. 2002 saw a dramatic increase in the number of asylum applications, jumping from 4,254 in 2001 to a peak of 55,426 in 2002; since then the number of asylum applications has remained above 30,000 for all but one year [4]. The most recent UNHCR figures put the number of recognized refugees at 43,546 and 227,125 asylum seekers [5], with current trends indicating that the majority originate from eastern DRC and Zimbabwe [6].

The xenophobic attacks that spread across the nation in May 2008 are cause for concern not least because they show a South Africa moving away from the promise of the early post-apartheid years towards a climate of intolerance and violence. These attacks are commonly seen as an expression of rising tensions between citizens and non-nationals with roots in the government's inability to address the needs of its citizens and account for its failure to deliver on promises made since the transition to democracy, particularly with regard to job creation, housing and social services for poor and unemployed South Africans [7].

But while such tensions may have been among the root causes, extensive empirical evidence suggests that the violence was deliberately instigated by local groups and individuals for their own personal political and economic benefit, and was rooted in the politics of townships and informal settlements more than in xenophobic attitudes per se. Popular

frustrations and inter-group tensions were thus used as tools to achieve personal gain [8].

It is also important to note that the government's lack of preparedness and inability to prevent or control the May 2008 xenophobic attacks was "bewildering" to activists and scholars working on migration in South Africa: xenophobic violence in townships and informal settlements had been steadily increasing since 1994, and in the months leading up to May 2008 there had been clear warnings of xenophobic violence and intent. Police and other state authorities had been notified, and the African Peer Review Mechanism 2007 country report on South Africa had even warned that "xenophobia against other Africans is currently on the rise and must be nipped in the bud" [9].

Instead, however, the government seemed to be caught unaware by the extent of the May 2008 violence. The first wave broke out on 11 May 2008 in the township of Alexandra, near Johannesburg: an armed mob broke into the shacks of foreign nationals, killing two men (one Zimbabwean and one South African), raping two women and injuring 60 people. By the next day a thousand people were displaced and taking shelter in front of a police station, and on 13 May hundreds of people went door to door, evicting foreign nationals from their homes. The violence spread like wildfire across South Africa over the next days, reaching 135 communities, including all the major cities [10]. Hundreds of homes and shops of foreign nationals were looted and burnt; women were gang raped; men and women were stabbed, mutilated, burnt alive, shot and hacked to death; hundreds gathered in mobs and attacked foreign nationals and police; South Africans too were caught up in the violence. The government responded slowly, apparently surprised by the extent of the crisis; it was ultimately forced to deploy the armed forces to support the police in Gauteng province, who were unable to provide protection. It was the first time the armed forces had been used to restore public order since the fall of apartheid [11]. In the end, 62 people were killed; dozens of women were raped; at least 670 people were injured. People lost their homes, businesses and property. Families were separated, and some have still not been reunited or discovered what happened to loved ones.

What began as a security crisis became a humanitarian emergency as tens of thousands—mostly foreign nationals—were displaced and left without shelter, protection, food and clothing. The government eventually realized the inadequacy of the conditions in which those displaced by the crisis were

forced to live and established temporary settlements with the support of non-governmental organizations (NGOs) [12].

The attacks in May 2008 did not last long, but the Consortium for Refugees and Migrants in South Africa (CoRMSA) notes that they were “unprecedented in their ferocity, intensity and rapid geographic spread,” as well as in the international attention they received [13]. Domestically, though, while the death toll of the May 2008 violence was nearly as high as that of the 1960 Sharpeville massacre—one of the bloodiest incidents of the apartheid era: police opened fire on a predominantly black crowd protesting discriminatory pass laws, killing 69 people and injuring more than 180, most of them shot in the back; it exemplified the kinds of measures the state would sanction to uphold apartheid, and so became a defining moment in the liberation struggle [14]—the attacks on foreign nationals did not generate nearly the same degree of public outrage [15]. This reflects the disturbing degree to which xenophobic attitudes are both widespread and normalized in contemporary South Africa.

Indeed, there have been newer instances of mass xenophobic violence and forced displacement. In December 2009, for instance, two thousand foreign nationals—predominantly Zimbabweans—fled their homes in the De Doorns informal settlement in the Western Cape after confrontations with local residents, sparked by frustration over underemployment and competition for farm-worker jobs [16]. As in 2008, people lost their property and their homes: many of the shacks they had lived in had been “removed” [17]. As in 2008, police and local officials appear to have had warning that an attack would take place, but were not willing or able to prevent it, giving rise to an assumption of complicity and tacit agreement: a week before the attack, a public meeting took place at which it was decided that Zimbabweans’ shacks would be dismantled; police and local government officials were present [18].

In the first half of 2010, CoRMSA has already documented at least ten incidents of xenophobic violence. These include widespread violence and looting near Sasolburg on 2 May, in which over a thousand people were involved in attacks on foreign-owned businesses, apparently in response to the stabbing of a South African by a Somali national. Again, the police were slow to respond. Victims of the attacks had already been targets of xenophobic violence at least three times and had relocated to

Sasolburg in an attempt to reintegrate into a new community [19].

The recurrence of such violence against foreign nationals shows the alarming degree to which the South African government and security sector appear not to have learned from the May 2008 attacks. As CoRMSA stated baldly in its 2009 report: “If we learned any lessons from the May 2008 attacks it is that you can rob and murder foreigners and get away with it” [20]. The incident in De Doorns is uncomfortably similar to incidents that occurred in and before May 2008; then as well local police had advance warning of eviction threats but did nothing to prevent attacks, and evacuated foreign nationals instead of protecting them and their property within the communities. CoRMSA goes so far as to say that the government and security forces’ “late and indecisive” response in the face of these warnings and to the May 2008 attacks “effectively endorsed perpetrators’ intentions to rid their communities of ‘outsiders’” [21].

Moreover, few of the perpetrators were brought to justice. Although over a thousand arrests were made in connection with the May 2008 violence, only 105 cases were finalized; and of the 70 perpetrators who were found guilty, none were convicted for rape or murder. Most cases were dropped; police regularly released suspects under pressure from communities and local leaders; the most common charge was theft and assault; the most common sentence was imprisonment with the option of a fine. By doing little to hold the perpetrators of one of the deadliest, most widespread and most ferocious acts of violence in South Africa in the last fifty years accountable for their crimes, government institutions have created a climate of impunity that supports the view that foreign nationals are not equal before the law, and that leaves the way open for further violence, as more recent events have proved [22].

By failing to prevent such attacks, South Africa is failing to uphold its obligations under national and international law: South Africa is bound by main international human rights instruments, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights, and the African Charter on Human and Peoples’ Rights. These and the South African Constitution itself create mutually reinforcing guarantees of life, liberty, human dignity and security of person and prohibit precisely the kind of unlawful interference with privacy, family and home to which foreign nationals in South Africa are being subjected. None permits discrimination on the basis of citizenship

with regard to such fundamental rights. Moreover, under the international refugee conventions to which South Africa is party, buttressed by the country's own Refugees Act, the government has signed onto an obligation to protect the refugees and asylum seekers within its borders. Indeed the whole body of refugee law is founded on the protection principle; the government's inability to control and prevent xenophobic violence is an egregious failure in this regard.

### *B. Youngsfield and Blue Waters*

In Cape Town specifically, the cases of the Youngsfield and Blue Waters safety sites provide a clear indication of the gulf between how the government and refugees and asylum seekers interpret this obligation to protect. Youngsfield and Blue Waters were among the five safety sites created by the City of Cape Town at the request of the provincial government as a humanitarian response to the massive displacement caused by the xenophobic attacks of May 2008. At their height, the five safety sites housed 20,000 people [23]. Four of the sites, including Blue Waters, were established on city property; the Youngsfield site, in contrast, was on a military base—private property owned by the South African National Defence Forces. The City of Cape Town managed day-to-day operations at all five sites, with support from a broad, informal coalition of civil society organizations (CSOs) as well as the UNHCR.

The sites were first consolidated and then officially closed at the end of October 2008 as the city embarked on a programme of “safe reintegration,” having determined that the emergency conditions that necessitated the creation of the sites—namely widespread civil disturbance—no longer applied. The official closure of the sites meant that electricity supplies were cut off, and site managers began to deny access to CSOs that had been providing humanitarian assistance. They were accused of trying to make conditions in the camps intolerable as a way of encouraging residents to leave.

The UNHCR advised the internally displaced persons (IDPs) of the three durable solutions the organization promotes: voluntary repatriation to their home countries, local reintegration, or resettlement to a third country. Voluntary repatriation, however, is a limited option: It is not a solution for those who fled their countries of origin in fear for their lives. Nor is UNHCR-assisted repatriation an option available to most asylum seekers, whose status as bona fide refugees is still being determined. The UNHCR will also not assist in returning refugees and asylum seekers to areas still deemed unsafe, for instance

Somalia and the eastern DRC; this is considered tantamount to *refoulement*, which is illegal under international law. For many of those displaced by the violence, local reintegration was thus the only realistic option. Most IDPs returned either to their home countries or to local communities. A small group, however, refused to leave the Blue Waters and Youngsfield sites—the only two remaining by October 2008—on the grounds of vulnerability, arguing that they could not be reintegrated to local communities due to the attacks they had been subjected to and the continued risks of violence.

In March 2009 the city launched eviction proceedings against the individuals remaining at Blue Waters through the Western Cape High Court. In light of the eviction proceedings, a stakeholders' forum was established to try to find a durable solution to the problem, comprising the city government, the UNHCR, representatives of the camp residents, and CSOs with a mandate to support and assist refugees and asylum seekers.

The City offered the remaining IDPs a resettlement package that included a small financial payment for the majority and city-managed housing in the Blikkiesdorp neighbourhood in the Delft Temporary Relocation Area for those considered particularly vulnerable. The IDPs rejected the offer, arguing that Blikkiesdorp was unsafe and the financial assistance was insufficient to allow durable integration into a community where they would not continue to be targets of xenophobic violence.

The High Court found for the City of Cape Town on 24 February 2010: the site residents were ordered to leave by 31 March 2010 or they would be forcibly evicted; the City was ordered to provide some assistance towards reintegration, offering residents a choice of a one-time cash payment, job skills training or trauma counselling. It was also ordered to provide up to 40 houses in Delft to those identified as particularly vulnerable. Faced with no other option, those included on the so-called vulnerable list—which included residents from both Blue Waters and Youngsfield—ultimately agreed to be relocated to Delft. Residents remaining at Blue Waters were forcibly evicted on 15 April 2010. Residents at Youngsfield Military Base were evicted on 29 April 2010, without a court order [24].

Throughout this process, local reintegration was encouraged as the principal durable solution. But questions have been raised not only by the IDPs themselves, but also by CSOs working to assist them as to what reintegration means in practice, and whether the government fulfilled its obligation to

protect as it encouraged victims of xenophobic violence to return to local communities.

CoRMSA states unequivocally in its 2009 report: “Claims that the post-violence reintegration has been peaceful and unproblematic are false.” CoRMSA points out that many of those who “reintegrated” to local communities went to areas that had not been caught up in the May 2008 violence, and that those who returned to communities where attacks had taken place faced threats of further violence. Meanwhile, local leaders continued to make public statements that they did not want foreign nationals back in their communities [25].

This finding corresponds to testimonies received by the Projects Abroad Human Rights Office (PAHRO) from Blue Waters and Youngsfield residents. The majority had either directly experienced threats or violence when they tried to move back to local communities or heard about threats or violence directed at other IDPs who had reintegrated. In some cases, IDPs returned to the remaining safety sites—some even advised to do so by local police—after being attacked following their attempted reintegration. For instance, in Samora Machel, one of the townships from which foreign nationals were expelled during the xenophobic violence, a threatening letter was circulated to foreign nationals in March 2010: “This place which we are living in is so dirty because of the foreigners who are taking our jobs. On 21 March 2010, the day of our rights [Human Rights Day], they must leave Samora. If they don’t get out, they will have a big problem.” While no incidents took place on 21 March, this and other threats had a chilling effect on IDPs and returnees already successively traumatized by the violations that had caused them to flee their home countries, by the attacks of May 2008—which had been preceded by similar warnings—and by their experiences in the safety sites.

Thus despite the poor conditions that characterized the camps by March 2010—no electricity, flimsy shelters, lack of access to transportation, health services, education and food, since these latter were no longer provided by the City—a common refrain from the IDPs who remained was that they would rather stay in the camps than return to the communities, because at least in the camps they felt safe.

The desperation felt by many Blue Waters residents who were unable to find accommodation—or unwilling to return to local communities—in the days after the eviction is vividly illustrated by their attitudes towards repatriation. On 21 April 2010, law

enforcement officers charged with preventing the IDPs from constructing informal housing outside the camp, where many had remained since their eviction, began to take down the names of people interested in returning to their home countries. The majority signed up, many of them having originally fled from Somalia or eastern DRC, both of which remain unstable due to ongoing armed conflict and civil unrest.

Also of concern is the very fact that law enforcement officials undertook to compile this list, since it is the UNHCR and not the government that has the mandate to support voluntary repatriation, and that only on a case-by-case basis following an assessment of conditions in the country of origin to ensure *non-refoulement*, as clarified by Mr. Patrick Male Kawuma, the UNHCR head of field office in Cape Town, to both the IDPs who remained outside Blue Waters and PAHRO on the day the list was compiled [26]. It is unclear whether the law enforcement officials in question were simply acting outside their mandate in a good-faith effort to solve the problem before them or whether their action was prompted by anti-foreigner attitudes displayed by government and police officials before, during and after the May 2008 attacks. These attitudes are, alarmingly, even displayed by Refugee Status Determination Officers during eligibility hearings. Asylum seekers have reported outright hostility from interviewers, who made such prejudiced statements as: “Zimbabweans have to go back to their country”, “What’s wrong with you people? Why don’t you go somewhere else?”, “Did you come here because you heard our women are cheap?” and “Why are you guys leaving your country and bringing trouble here in South Africa?” [27].

Such attitudes and experiences point to the need for a more systematic, government-led effort to build trust between citizen and non-citizen communities in South Africa. Indeed, an Oxfam report capturing lessons learned from a comprehensive reintegration project following the closure of the safety sites poses vital questions about the very concept of “reintegration” in the South African context illustrating the extent of the underlying problem.

The term ‘re-integration’ implies that prior to the xenophobic attacks and their displacement, foreign nationals had been integrated in South African communities. It is commonly accepted, however, that this is an optimistic view and that full integration has not taken place, particularly in the areas where the violence occurred. Xenophobic attitudes of South Africans towards non-nationals have, for more than

ten years, created an environment characterised by structural injustices that prevent foreign nationals, particularly from other African countries, from becoming an integral part of society [28].

Stakeholders involved in assistance to the IDPs seeking to return to local communities agree that the government has made insufficient efforts to promote an environment more welcoming of foreign nationals, or to mediate effectively between citizens and non-citizens in order to allay fears on both sides: for citizens, that foreign nationals will undermine their own livelihoods and access to services; for foreign nationals, that they will once again be subject to violent persecution. Such efforts would include holding perpetrators of violence accountable for their actions, taking threats of future violence seriously, mediating between local and foreign communities, taking action to address the well-documented discriminatory attitudes and practices in government offices that deal with refugees and asylum seekers, refusing to tolerate xenophobic statements by public officials, and so on. As Oxfam notes in its lessons learned: “although a ‘crisis response’ can be provided in ... a short time, integration itself needs a lot longer” [29]. The response by local, provincial and national governments to both the May 2008 violence and the closure of the safety sites when the situation stabilized was a crisis response: it did not engage with the underlying issues sufficiently to support real (re)integration, and thus to fulfil its obligation to protect the refugees and asylum seekers in its care.

Of even greater concern, however, is that the government’s failure to properly address xenophobia in the communities has become starkly apparent in threats that have begun to surface in connection with the World Cup. According to CoRMSA, foreign nationals across the country have been reporting threats from “neighbours, colleagues, taxi drivers, passers-by on the street, but also from nurses, social workers and police officers.” One nurse told a woman who had brought her child in to be immunized to “go back to your country. After June there will be no more foreigners in this country. You will all die.” CoRMSA adds, moreover, that “some of those making the threats believe they have the support of senior political leaders” [30]. These threats are real and many foreign nationals have been reporting them to community-based organisations. For instance, a refugee who accepted to reintegrate into his community with his family came to report verbal threats made to his wife by a local South African woman, providing PAHRO with recorded evidence of the threats. The Scalabrini Centre of Cape Town has been receiving such reports from its

beneficiaries so consistently that, in light of the similarity to the warnings that preceded the May 2008 attacks, it has undertaken an early warning survey to better assess the scope and severity of the threat. As in 2008, however, the government has taken no visible action so far to address concerns related to xenophobic violence. Its focus has rather been on human trafficking for the purposes of sexual exploitation, which is expected to rise as thousands of visitors flood into South Africa in June and July—and to target South African citizens. As the World Cup approaches, civil society voices have become louder in an effort to focus public attention on the threats directed against foreign nationals and to prevent additional attacks on a population that is already vulnerable and already traumatized.

According to the 1951 UN Refugee Convention, an individual can qualify for asylum in another country on the basis of a well-founded fear of future persecution, whether directed at them as an individual or due to their inclusion in a particular social group. It could thus be argued that foreign nationals could claim asylum from South Africa on the basis of the May 2008 attacks, continued incidents of xenophobic violence since then by and against both individuals and communities, and threats of further xenophobic violence after the World Cup. This is a damning indictment of the degree to which South Africa is willing and able to live up to its protection obligations as a refugee-receiving country and to the principles enshrined in its own Constitution. Immediate and strong action by the government is needed to ensure that the early warnings are heeded and a new wave of xenophobic violence is effectively prevented.

### III. SOCIAL AND ECONOMIC RIGHTS

As a signatory to the International Covenant on Social, Economic and Cultural Rights (ICESCR), along with the UDHR and its own Constitution and national legislation, South Africa has made strong commitments to protecting social and economic rights, including access to housing, health care, education, employment, adequate food and freedom from hunger, social services and employment, among others.

No discussion of refugee protection can be divorced from these fundamental second-generation rights, particularly in a context like that of South Africa, where the majority of refugees are integrated in urban areas rather than housed in camps and thus more vulnerable to various protection risks, including harassment, exploitation and inadequate and overcrowded shelter. UNHCR policy on refugee

protection in urban areas calls on host states and the international community to ensure that all refugees, “irrespective of where they are located,” are able to exercise all the rights to which they are entitled under international law and “to live in acceptable conditions.” These rights include the right to life, the right to family unity and the right to “adequate food, shelter, health and education, as well as livelihoods opportunities.” [31]

Host states play a crucial role in ensuring that refugees in urban areas are able to access these rights, first by signing on to the relevant international law (as South Africa has done) and then by integrating protections for refugees and asylum seekers into national legislation so they are able to access the social welfare systems available to citizens. The South African Constitution is a model document in this regard, extending the majority of rights and protections to “all people in our country,” not just nationals, as clearly stated in Chapter 2, Section 7(1) of the Constitution’s Bill of Rights. Differences in access to social welfare do exist: refugees, but not asylum seekers, are entitled to school fee waivers; permanent residents, but not refugees, are entitled to monthly child assistance benefits.

But the Constitution, under Section 9(3–4), explicitly bars discrimination on the basis of “ethnic or social origin”; under Section 26 it grants “everyone” the right to access to adequate housing, access to health care services, sufficient food and water, social security and “appropriate social assistance” if they are unable to support themselves and their dependents, as well as a basic education, as per Sections 27 and 29. In terms of Section 27, the state is obliged to “take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of [the rights to health care, food and water, social security, and social assistance].” Moreover, the Constitution enshrines additional rights for children, including basic nutrition, shelter, basic health care services, social services and protection from maltreatment, neglect, abuse, or degradation; it also specifically enshrines protection for children in times of armed conflict.

The strong protections guaranteed by these national and international instruments do not, however, reflect the realities experienced by internally displaced persons in the two years they spent at the Blue Waters and Youngsfield safety sites—particularly after the sites were officially closed but remained minimally operational—during and following their eviction from the sites, and in the city housing in Delft provided to the most vulnerable of the residents

in the two sites.

An evaluation by the Forced Migration Studies Programme (FMSP) of the response to the disaster calls attention to the fact that government and CSOs were operating without significant experience or capacity in disaster relief. The willingness of CSOs to step outside their mandates in order to collaborate with the government on emergency assistance was laudable. The lack of experience in government and civil society, however, and the lack of clear leadership from the government, meant that widely accepted international standards for humanitarian response were neither known nor used, leading to gaps in basic services and a generally chaotic response [32].

The FMSP report also attributes some of the gaps in relief efforts to confusion arising from the fact that the beneficiaries were foreign nationals. Government officials, as well as some civil society members, expressed the fear that further resentment and/or violence might arise if foreign nationals were perceived to be receiving more assistance than citizens. Xenophobic attitudes were observed among government (and even civil society) actors providing emergency relief. There was uncertainty as to which governmental agency should play the lead role in the disaster response: the Department of Home Affairs (DHA), for instance, is generally assumed to be responsible for everything related to foreign nationals, but it is a largely administrative department concerned with documentation, and has no capacity or experience in the provision of basic welfare services [33].

### *C. Snapshots of life in the safety sites*

A definition of what constitutes “adequate” housing must be established in order to measure the conditions at the safety sites: at minimum, it must include space, sanitation, protection from the elements, and privacy. The South African Human Rights Commission (SAHRC) conducted a monitoring visit to the Blue Waters site on 27 June 2008 and reported that while original residents lived in the brick bungalows that were part of the holiday camp, newer arrivals were housed in tents [34].

The tents provided almost no privacy or protection during storms, and most residents, including children, did not have warm clothing or blankets for the winter season [35]. The SAHRC monitoring team also found that while IDPs had limited access to clean water and sanitation facilities, lack of access to food, electricity and medical care were extremely problematic [36].

At the Blue Waters site, residents reported receiving two meals a day provided by the NGO Mustadafin.

Times of the meals varied, sometimes being earlier or later than scheduled. The second meal, to be served between 5:00 and 7:00 p.m., was reported by staff to be rice, potatoes and meat, though residents reported receiving only rice and potatoes. The portions decreased as new residents joined the safety sites. Rations ran out on some days, meaning that some people did not receive meals [37].

Article 25 of the Universal Declaration of Human Rights (1948) also includes a right to special care and assistance for mothers and children. The SAHRC monitors, however, found that there were insufficient rations for children and infants. The available milk rations had been significantly reduced since the site opened, affecting not just children but also lactating mothers [38].

Similarly, in the Youngsfield safety site, monitors observed that an eight-month-old baby from Burundi received only tea and porridge to eat—no milk; in other words, the food ration was not appropriate for an infant, with insufficient nutritional value [39]. These are just some of the ways in which providers of emergency relief struggled to meet their obligations to the IDPs during the crisis.

#### *D. Eviction and its consequences*

During the court-ordered eviction from the camp in April 2010, IDPs' rights were further violated. The High Court had ordered that if a forced eviction became necessary, residents' personal property should be held by the city for a fixed length of time, during which it could be reclaimed by the owners. While the eviction itself and the collection of property took place without incident, IDPs reported to the Projects Abroad Human Rights Office (PAHRO) that the city put no system in place to register ownership, and that when they went to reclaim their possessions they found that most things of value had been stolen while in storage [40]. More worrying is the fact that a number of IDPs lost their status documents during the eviction, putting them at risk of arrest and deportation, possibly refoulement [41].

Approximately 160 IDPs who had no alternative housing simply moved across the road from the ocean-front site following the eviction and spent the following week among the dunes. Law enforcement officials were instructed by the city to "prevent illegal occupation or erection of structures on any municipal or private land." [42] This instruction was to prove contentious, as law enforcement officials followed it to the letter and prevented IDPs from rigging blankets on sticks to protect their children from the rain that began in the nights following the

eviction. Eight people were arrested and five were charged with public violence (the others were minors and released without charge): the media reported that they were alleged to have thrown stones at police, but two of the men arrested dispute the charge [43].

"One day police came to take our blankets," said one. "We thought they were doing this to kill us, taking our stuff. They wanted to take it by force. We resisted them to take the blankets." "Resist[ing] them," he explained, meant that when the police took hold of one end of the blanket he was using to shelter his child, he grabbed the other end and refused to let go. One officer hit him on the head with a baton and, bleeding, he was arrested and pushed into a nearby police vehicle.

"I didn't fight with police," said the other. "I just asked them why they took my stuff. I asked where I must go. You said you'd find me a safe place. Wow, you are chasing me away again. The government wants the land because tourists are coming for the World Cup." He alleged that police were not only taking blankets that IDPs had erected into makeshift shelters, but also blankets that people had wrapped around themselves as protection from the rain and cold [44].

Those who were arrested on 18 April 2010 were ultimately held for a week in Pollsmoor, a notorious maximum security prison in Cape Town; their court hearings were deferred four times until the charges were finally dropped and the detainees released because the state was unable to provide them with the interpretation or legal representation to which they are entitled by law.

On the morning of 21 April, those IDPs remaining on the beach were threatened with arrest for trespass if they did not vacate the premises by 5:00 p.m. The Department of Social Development threatened to take children away from their families if they continued to stay in the open. Faced with these stark options, the majority of IDPs managed to find emergency temporary accommodation, including in shipping containers and between brick piles on the property of a local church. Families were separated. Some parents hid children in fear that the Department of Social Development would remove them.

Despite the warning and the threat of arrest, however, 37 individuals were unable or unwilling to move from the beach and were arrested as warned. They were released without charge after two days, and remained together as a group camping first in front of the police station where they had been detained, then in front of the offices of the Cape Town Refugee Centre, where the UNHCR was due to hold advisory



consultations with IDPs evicted from the safety sites. Some were arrested again days later, also for trespass; others dispersed. It is uncertain whether and where they have found accommodation. While it appears that some in this group were making a political statement about the government's failure in its obligation to protect—insisting, for example, that they be arrested along with the others because they were part of a group [45]—some may legitimately have been vulnerable persons unable to find their way after the trauma of successive forced displacement and violence and two years in the safety sites.

Conditions at the safety site at the Youngsfield Military Base were also inadequate. The SAHRC monitoring team that visited the site soon after it opened in May 2008 reported that “housing provisions are very minimum and of poor quality” [46]. Some tents had no ground sheets; some had no mattresses, which meant that dew and condensation accumulated at night. Up to 25 people shared a tent [47]. Over the course of one weekend the camp flooded. Sand bags were delivered, but the tents remained vulnerable to further flooding. Many refugees relied on religious institutions for basic provisions and shelter, but heavy rains on 5 July 2008 caused the local mosque to completely collapse [48].

Prior to this natural disaster, the DHA tried to issue new ID cards to residents on Friday 4 July 2008 and Monday 7 July [49]. Various times throughout the process, the camp was closed to everyone. This meant that refugees returning from night-shift work were denied to access to their housing, among them a mother with a two-month-old baby [50]. A PAHRO monitoring team that visited the site on 14 January 2009, after the camp had been officially closed, found there was remained only one large common tent with approximately six refugee families [51]. Until camp residents were evicted in May 2010, this tent remained the principal housing. Over 60 people resided there, using blankets to erect makeshift shelters inside the tent in order to secure a minimal degree of privacy.

Those fortunate enough to be included on the vulnerable list were provided with housing by the City following the evictions from the two safety sites. The Western Cape High Court ordered that up to 40 houses be reserved for the most vulnerable of the IDPs. They were moved to the Delft Temporary Relocation Area, which also houses South Africans evicted from informal settlements around Cape Town. Conditions there have, however, been criticized by residents and the Western Cape Anti-

Eviction Campaign and arguably do not meet the basic definition of “adequate” housing, lacking privacy, space, structural solidity and cleanliness [52].

Approximately two million people live in the settlement in shacks measuring no more than twenty square meters. A PAHRO team visited the Blikkiesdorp site—the same in which the vulnerable IDPs from Blue Waters and Youngsfield have been housed—on 20 May 2010 and observed the conditions directly: the houses are constructed of corrugated tin sheets that separate with the slight pressure of a single touch [53]. The roof sags and leaks in the rain. The flimsy insulation was described as a hybrid of “Saran wrap and bubble wrap” [54], and the constant winter damp, which the shoddily constructed homes do little to keep out, poses health concerns.

Many Blikkiesdorp residents complained to PAHRO that the government had channeled too much money into the World Cup and should reconsider its spending priorities. Five new stadiums have been constructed and five existing venues are being upgraded for the World Cup. These projects carry a price tag of 8.4 billion rand, almost four times the cost projected in 2004 when South Africa won the bid. Put in perspective against South Africa's social security commitments: this is the equivalent of 33,600,000 monthly child support payments at ZAR 250 each [55].

In addition, it was reported to PAHRO that IDPs relocated to Delft were being harassed every night by local youth residing in the settlement, who would throw stones at the houses of foreign nationals and run sticks along the corrugated tin walls. Conversations with local community members, who were in general reported to be accepting of the IDPs, suggested that this harassment by youth was targeting only foreign nationals. Some of the families had determined to relocate within the settlement to houses off the main road, despite the more cramped location, due to fear arising from the harassment [56]. On 10 April, one of the stones crashed through a window and a child was injured [57]. Houses provided to IDPs were not fitted with electricity, and construction of toilets had not been completed despite adequate advance notice of their relocation to the site [58].

#### *E. Access to employment*

Under Chapter 2, Section 23(1), the South African Constitution (1996) declares that “Everyone has the right to fair labor practices.” Refugees, asylum seekers and other foreign nationals with correct legal documents enjoy the right to work in South Africa,

including the rights to self-employment and entering into contracts and leases [59]. For both refugees and asylum seekers, the status document issued by the DHA provides proof of their right to work [60]. Many employers, however, are hesitant to hire individuals who cannot prove that they have been in the country legally for more than three months—the typical validity period of a temporary asylum seeker permit—and so asylum seekers often face discrimination from employers on the basis of their legal status, in stark contradiction to their rights under the law. Misunderstanding of the labor rights of refugees and asylum seekers as enshrined in the Constitution and the 1998 Refugees Act contributes to the perception that they are economic migrants in the country illegally [61]. Protectionist attitudes around labor and competition for jobs played a large part in fuelling the xenophobia that underlay the May 2008 attacks: foreign nationals are widely believed to take jobs from underemployed South Africans, for instance by being willing to work for lower wages or by undercutting local businesses. They are perceived to be a burden on the socio-economic system, rather than a group with specialized skills that can contribute to the national economy [62].

In desperate need of income, many refugees and asylum seekers take up informal labor such as gardening and construction, for which they are paid a fraction of the wage a South African would earn [63]. This type of labor exploitation results in a double discrimination: on the one hand, it violates the economic rights of refugees and asylum seekers as laid out in the Constitution and Refugees Act; on the other it further fuels xenophobic attitudes and thus makes it even more difficult for refugees and asylum seekers to access employment opportunities.

Another fair practice stemming from labor relations is the ability to bank one's assets, but refugees and asylum seekers are often unable to access credit or banking services due to uncertainty regarding the validity of their documentation [64]. Asylum seekers face particular difficulty given the temporary nature of their permits (generally valid for only three months).

The policy at the ABSA bank, for instance, actually denies asylum seekers the right to open bank accounts: only holders of section 24 permits (i.e., refugees) can access this service.

FNB, in contrast, does allow section 22 permit holders (i.e., asylum seekers) to open accounts, but their bureaucratic policy makes this a long and complicated process in practice: The bank requires that the asylum seeker permit used to prove legal

status in South Africa be certified by DHA before the account can be opened. All FNB branches in the country liaise with a single DHA official in this regard, creating a months-long backlog of queries. If the asylum seeker permit expires before it can be certified and is replaced with a new permit, the process must be begun again. As of May 2010, FNB was still waiting for confirmation of permits it had submitted to DHA in November 2009 [65]. Meanwhile, foreign nationals continue to be victimized because their assets are in cash and generally held in insecure locations [66].

Access to employment was a serious problem for IDPs in the safety sites. Many had already lost significant assets during the xenophobic attacks that led to their displacement. Once in the camps, many of those who took the initiative to seek livelihoods opportunities reported being attacked again and facing xenophobic attitudes when reporting crimes against them. A Somali refugee in Youngsfield, for instance, reported that police ignored his complaints when his shop was robbed and instead told him to leave the country. Already traumatized by being separated from his wife and children in his flight from Somalia, he was further victimized in South Africa first by the xenophobic violence and then by the loss of property worth ZAR 400,000 [67]. At both Youngsfield and Blue Waters, refugees who were employed reported to the SAHRC that there was little to no transport to work. Access to employment was not just physically difficult, but due to inadequate transport they reported that their punctuality, and therefore their reputation and ability to access jobs, suffered [68]. Other IDPs were unable to access stable employment due to illness or care-giving obligations.

Uncertain access to employment had a significant impact on IDPs' ability to reintegrate to local communities after they left the camps. Indeed lack of financial means was one of the recurring problems raised by PAHRO clients seeking assistance with reintegration. Without the financial means, they were unable to afford sustainable accommodation. And while most residents of both the Blue Waters and Youngsfield sites ultimately received the ZAR 1,000 per person provided to assist their reintegration effort, the small one-time payment was merely a stop-gap measure, not the foundation for a sustainable solution.

Large families, meanwhile, who received a proportionately larger sum, faced difficulties in identifying landlords who would take them in. Lack of means also made it difficult for many IDPs to

access accommodation outside of townships and informal settlements—and thus to remove themselves from the environments most prone to xenophobic violence. After the final eviction, many of the residents thus found temporary accommodation with friends or acquaintances, splitting families simply to keep a roof over their heads or living in overcrowded and inadequate housing—both contrary to South Africa’s guarantees of social and economic rights, and neither a sustainable option.

Without access to a stable income, families are at ongoing risk of losing their accommodation and being forced into the street. Shelters are overcrowded and many have conditions that prevent families from staying together (e.g., one only accepts single males over 25, another only abused women with no more than one child under four) [69].

#### *F. Health Care*

All properly documented migrants are entitled to health care as guaranteed in Chapter 2, Section 27(1)(a) of the Constitution, which includes reproductive care. The African Charter on Human and People’s Rights, in Article 16, also enshrines the right to enjoy the best attainable health [70].

The SAHRC monitoring team reporting on conditions at Blue Waters in June 2008, however, noted that there was no medical care available on site [71]. When residents were ill or injured, camp officials had to wait for officials from the Department of Social Development [72]. Residents reported that numerous people did not receive adequate health care [73]. There was also no psychological counseling available at the camp to help residents cope with the trauma of forced displacement and the violence they had suffered [74].

At Youngsfield, in contrast, the PAHRO monitoring team found that there was a medical tent with a doctor on site daily from 10:00 a.m. to 1:00 p.m., though he was at the time contemplating reducing his appearances to just three times a week, arguing that Youngsfield was taking medical resources away from others [75]. There was a car on call for emergencies 24 hours a day, but the doctor suggested that emergencies should happen only when he was present at the site and was adamant that diabetics and epileptics could prevent “emergencies” by seeing him during the day, implying that should a diabetic or epileptic in the camp require emergency treatment it was the fault of the individual in question [76]. His statements to the monitoring team suggest a discriminatory attitude towards the IDPs in his care, though it is unclear if this was reflected in his treatment of patients.

Article 10 of the ICECSR includes special provisions for health and social security benefits for women before and after childbirth [77]. PAHRO monitors encountered a number of incidents at Youngsfield that seemed to contravene these provisions. In August, a leader at the camp told the monitoring team that about 15 women, all between three and five months pregnant, needed desperate medical help because they were vomiting constantly and unable to retain the food provided at the site (two meals a day), posing serious risks to both mother and child [78]. Another woman who gave birth during her residence at Youngsfield was made to leave the hospital only a few hours after the birth despite informing staff of her refugee status and living conditions [79]. Standards of hygiene, crucial to maintaining physical health, particularly for children, were also of concern at the Blue Waters safety site. Refugees who had been relocated to Blue Waters from the Soetwater site told a monitoring team that they had not received toiletries such as soap, toothpaste or detergent since their first week at Soetwater, a month before, making it difficult to maintain basic hygienic standards [80].

#### *G. Education*

Monitors observed in the Youngsfield and Blue Waters safety sites that children were unable to exercise their constitutionally guaranteed right to access to basic education. At Blue Waters, it was reported that some children did not attend school due to a lack of transportation [81]. At Youngsfield a lack of parental commitment was observed as parents kept children out of school to help look after younger siblings or assist with chores. Costs associated with school activities provided a further basis for discrimination: some children were teased by their peers for not having proper uniforms or lunches, making them unwilling to return to school. While such teasing is perhaps an inevitable part of school life, it takes on a different character given the discrimination and xenophobic violence to which these children had been subjected and which had caused their displacement. Meanwhile, the government did not provide regular teaching staff to the Youngsfield site. Children’s education thus relied on volunteer teachers who were only available during university holidays [82].

### **IV. CULTURAL RIGHTS**

South Africa is a state comprised of many different nations and a history of oppression against different cultural groups. The promotion of cultural rights is important to the fundamental protection of human rights. South Africa’s oppressive past has made the protection of human rights even more important in its

continuing on into the future as a constitutional democracy. Efforts to overcome the cultural abuses of the apartheid led to a strong push for the protection of cultural rights and the enacting of legislation to right the wrongs of the past. The idea of the 'Rainbow Nation,' in which different cultures can exist in harmony and equality, is a founding principle in the promotion of cultural rights protection.

South Africa is committed to multiple levels of human rights standards at the international, national and regional levels. As a member state of the United Nations and the African Union and signatory to major international conventions of these bodies, it is bound by their standards of human rights protection. The protection of cultural rights has been established under these instruments. This has allowed for the promotion of cultural rights through international organizations and the international pressure they exert.

As a nation, South Africa established its stance on cultural rights protection in its 1996 Constitution and regionally with provincial constitutions. Each of these creates standards with which the South Africa has agreed to comply in order to protect its culture and the cultural rights of its people. South Africa has made attempts to address the problems of their oppressive past and at the fore front of this attempt is the protection of cultural rights.

The 1996 Constitution replaced the previous apartheid constitution and as part of its attempt to right past wrongs it enshrined the protection of rights of different cultural groups. The establishment of the Rainbow Nation in South Africa began with the Bill of Rights and its attempt to protect cultural rights. The Constitution lays out an extensive and detailed agenda to protect cultural rights. Culture is the foundation of a civil society, which gives the population of a state its identity. One of the most important parts of culture is the languages that are used to express it. Language rights are thus essential in aiding in the protection of cultural rights, and so the Constitution addresses the protection of cultural rights by first establishing the protection of languages. Article 30, for instance, stipulates that "Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights." The protection of language ensures that society is able to practice its own culture in its own language.

Thus while refugees and asylum seekers are technically free to practice their culture, as, for instance, their use of their own languages, in fact

when they attempt to do so they become vulnerable to verbal and physical abuse by South African citizens. To the question as to whether African migrants in South Africa practically enjoy the right to use their own languages freely, many argue they are victims of stereotypes, prejudices, intolerance and discrimination. The best example in this regard is the popular term *Makwerekwere*, which is derogatorily used by Black South Africans to describe and ultimately discriminate against black foreign nationals because they cannot speak South African languages fluently. In other words, the term *Makwerekwere* refers to those incapable of articulating local languages that epitomise economic success and power [83].

In this sense "the term *Makwerekwere* means not only a black person who cannot demonstrate mastery of local South African languages, but also one who hails from a country assumed to be economically and culturally backward in relation to South Africa" [84]. According to Cadena and Starn, the term *Makwerekwere* is "generally employed in a derogatory manner to refer to African immigrants from countries suffering economic downturns" [85]. The term in its nature is considered to be degrading and does not respect human dignity of black migrants. In this respect, it is also argued that this derogatory and insulting term for a foreigner is used in South Africa to dehumanize black African migrants, delegitimize their presence, and mark them out for xenophobic attitudes, and sometimes attacks [86]. To better point out the discrimination against the migrants referred to as *Makwerekwere*, Nyamnjoh argues that "a racialised splitting of immigrants ensures that non-African migrants may be accorded a status of respect and admiration, while Africans are vilified as *Makwerekwere*" [87].

The protection of cultural rights in the South African Constitution is more broadly covered under the sections regarding equality and the section of freedom of religion, belief and opinion. The section on equality explains the need for mutual protection of rights among all citizens: "The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth" [88]. The section on equality is very broad and has a certain level of vagueness, stating that "National legislation must be enacted to prevent or prohibit unfair discrimination" [89].

Although it gives the outlines of the areas of

protection, it does leave some grey areas and room for interpretation: “Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair” [90]. The vagueness of the last subsection on the part of the Constitution regarding equality leaves room for political decisions to be made, depending on the cases. This can create problems in the protection of cultural rights as they become dependent on political perspectives and could potentially be decided depending on one person’s perception of what constitute cultural rights and whether or not these rights have been violated. Although the protections are broad, the fact that the subsection leaves room for judgment makes it possible that some violations could be overlooked or deemed irrelevant, due to the openness of the legislation. This creates more questions than answers when it comes to the actual application of the legislation.

The promotion of equality in the South African Constitution is a small part of the promotion of cultural rights. Culture is reflective of the society it represents and the values and beliefs that are shared by the population as a whole. Equality allows for the equal opportunity for all to practice whichever culture is suitable, and is thus essential to establishing cultural rights.

The High Command for Human Rights also explains that, “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language”[91], the International Covenant on Economic, Social and Cultural Rights (1966) is another instrument that promotes the protection of cultural rights.

Article 17 gives the protection of cultural rights, in the freedom to take part in which ever culture is suitable to the individual, as well as the role of the state in protecting the culture that exist within its border.

Although South Africa has agreed to these human rights standards, the actual practice and application of these standards is debatable. In the case of the protection of cultural rights, the issues of protecting religious practices and other cultural practices tend to be overshadowed by the problems of xenophobia and clashing cultures. The ideal of the Rainbow Nation has been overshadowed by the tendency for cultural groups to self-segregate due to the aforementioned xenophobic attitudes towards foreigners and other cultures. The concept of the self-segregating culture

is best explained in personal interviews conducted in 2004 by Theodore Kamwimbi in his then-capacity of migrancy researcher with the Centre for Popular Memory of the University of Cape Town, where the interviewees were 9immigrants from the DRC. In each of the interviews, South African society was described as exclusive and unwilling to accept new immigrants. This tendency led to foreign nationals self-segregating with others from their country or region of origin and avoiding integration with the local population due to the negative and discriminatory opinions they expressed towards ‘foreigners.’ This is described by one interviewee thus:

“Personally I do not socialize with South Africans, I am in my corner, we know each other; we limit our exchanges to what is necessary. Yes, I prefer not to talk about South African hospitality, I’d rather say that we are in the country, we have obtained a document that allows us to stay in the country and that’s all” [92].

Another interviewee states:

“The South African people are more xenophobic. We find easily a minority of those who are easily accepting the foreigners, but is only a minority, because we’ve had to hear stories about our brothers who are staying in the townships with the blacks, who are staying here in South Africa with the Coloreds, they have terrible stories. So, it must be said that this South African people that cannot be understood, it is xenophobic, it has to be said” [93].

These interviews show the real issue between the clashing of different cultures and how the protections of cultural rights are undermined by the tensions between different cultures in South Africa.

Although the legislation of South Africa and the standards to which it has subscribed have created sound policies on the protection of cultural rights, there are still issues with cultural rights and tension between different cultural groups. Self-segregation by, for instance, groups of foreign nationals on the basis of their language and nationality impedes real integration within local communities and contributes to an environment of distrust where xenophobic attitudes flourish. Exercise of cultural rights thus has a potentially detrimental impact on these communities’ ability to exercise their first- and second-generation rights by maintaining distance and preventing the establishment of inter-community ties. Moreover, the legal protections of cultural rights are overshadowed by the xenophobic attitudes of an exclusive local culture. In not taking sufficient steps to curb the protectionist and discriminatory attitudes

that are expressed by citizens towards foreign nationals, South Africa is de facto failing in its obligation to protect the cultural rights of foreign nationals within its borders.

### V. CONCLUSION

South Africa moved from apartheid to multiracial democracy without major bloodshed. The country is built on strong institutions based on one of the most progressive constitutions in the world, and the rule of law prevails. In this positive environment, the culture of human rights and good governance is being promoted and South Africa has signed and ratified most international and regional human rights treaties.

By signing and ratifying in particular the UN and OAU refugee conventions, alongside other international instruments of human rights, South Africa is required to promote and protect all the human rights—namely the civil and political rights (first generation), the social and economic rights (second generation) and the cultural rights (third generation)—of the refugees and asylum seekers within its borders.

However, the reality on the ground as described in this paper shows that South Africa is not complying with international, regional and national standards of refugee law, as many refugees continue to be victims of gross violations of human rights. In terms of the first generation rights, many refugees and asylum seekers were killed, raped, burnt alive or otherwise physically molested during the May 2008 xenophobic attacks with total impunity by some South Africans. Their civil and political rights were not adequately protected in the government's response to that crisis. Even now, foreign nationals are being threatened with further xenophobic attacks and violence after the 2010 World Cup, and it is unclear whether the government will be in a better position to prevent such violence and protect foreign nationals than it was in 2008.

With regard to the second generation of rights, South Africa is not fully complying with the international, regional and national standards that guarantee social and economic rights. Although it took on direct obligations towards the foreign nationals living in the safety sites established in response to the May 2008 attacks, it did not live up to these obligations, and many refugees and asylum seekers in the government's care were not able to enjoy access to housing, health care, education, employment, adequate food and freedom from hunger, social services and employment and so forth.

Similarly, through its Constitution and ratification of major international and regional human rights standards, South Africa has made strong commitments to protecting the refugees' cultural rights. While refugees are not legally and technically denied the right to enjoy their own culture, to profess and practice their own religion, or to use their own language, there are derogatory, degrading, dehumanizing and insulting terms used by black South Africans to describe black African migrants that amount to a violation of their right to human dignity. Unfortunately the state is not doing enough to discourage use of these derogatory terms.

In order to protect refugees' rights and promote their integration into South African society, the government needs on the one hand to be more accountable to its citizens, creating more opportunities and living up to its commitments to the poor and the marginalized, and on the other to make more focused efforts to mediate between citizens and foreign nationals, to protect refugees and asylum seekers, and to assist them to build new lives in South Africa.

The government must eliminate the climate of impunity that makes foreign nationals appear to be unequal before the law. And it must work harder to promote sustainable opportunities for integration. The government must also take seriously the early warnings of violence after the World Cup in order to prevent a repetition of the May 2008 attacks targeting foreign nationals, and the severe violations that resulted. In all of these efforts, the government should consider taking a holistic approach to human rights, focusing on all three generations thereof. Only then will the saying that "the Rainbow Nation belongs to all who live in it" really be fulfilled, and South Africa live up to its post-apartheid promise of being a place where people of all races could coexist peacefully.

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