

**Mandates of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the human rights of migrants**

Ref.: AL ZAF 3/2022  
(Please use this reference in your reply)

1 July 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the human rights of migrants, pursuant to Human Rights Council resolutions 43/36, 44/5 and 43/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of **racism, racial and xenophobic discrimination, hate speech and xenophobic violence against migrants, refugees and asylum seekers in South Africa, including recent manifestations of xenophobic violence and hate speech related to the so-called "Operation Dudula" campaign.**

Special Procedures of the United Nations Human Rights Council have raised concerns regarding xenophobic violence and discrimination against foreign nationals in South Africa in prior communications to your Excellency's Government. Communication [OL ZAF 2/2021](#), dated 24 February 2021, concerned the Gauteng Township Economic Development Bill of 2020 and Communication [AL ZAF 1/2015](#), dated 1 May 2015, concerned a series of xenophobic and racist attacks perpetrated against migrants, refugees and asylum-seekers, in different locations and provinces of South Africa, especially in the provinces of KwaZulu-Natal and Gauteng. We regret that neither of these communications received an official response from your Excellency's Government. We also recall that the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on the human rights of migrants addressed multiple allegation letters to your Excellency's Government on the subject of xenophobic attacks in 2008 and 2009.

According to the information received:

As evidenced by the pattern of communications to the South African Government on this issue, racial discrimination and xenophobia against migrants, refugees and asylum seekers have been a consistent human rights issue in South Africa. In South Africa, xenophobic violence and racist ideologies are manifested through state practices, public perception, hate speech and media stereotypes. Reportedly, xenophobic rhetoric and policy proposals in South Africa are often justified through persistent myths that foreign nationals are "stealing jobs" or associated with criminality. These myths cannot be substantiated with disaggregated data, but are widespread, and often promoted by local and national politicians.

Racial and ethnic profiling and the excessive use of force by vigilante groups are common, while law enforcement officials generally fail to ensure perpetrators are arrested. Institutionalized xenophobia results in discrimination in the administration of justice, as well as xenophobic discrimination in access to economic and social rights. The Government frequently considers discriminatory bills and laws in the context of immigration, and it has so far failed to widely collect data disaggregated by ethnicity and other characteristics.

The information provided also alleges the deliberate abuse of social media to spread misinformation regarding foreign nationals living in South Africa, as well as the abuse of social media to spread ideologies and rhetoric inciting hatred, violence and xenophobia against foreign nationals in South Africa.

In regard to the criminalization and arrest of migrants, refugees and asylum seekers, there have been numerous alleged incidents of violence in detention centres, including excessive use of force, torture, sexual violence and other forms of ill-treatment. Reportedly, there is a high number of deaths in custody resulting from the actions or omissions of police and prison officials and from the absence of medical treatment, which is compounded by the limited number of investigations and prosecutions related to such deaths. The Committee Against Torture has expressed concern about these reports in its 2019 concluding observations on South Africa.

High levels of inequality still persist in South Africa, leading to lower standards of living and poor service delivery in less-affluent communities. According to the South African Human Rights Commission, most migrants in South Africa live in these communities. The struggle for survival and competition for social and economic opportunities are important root causes of the stigmatisation and scape-goating of migrants, which leads to discriminatory policies, racist hate speech and acts of xenophobic violence.

Also according to the South African Human Rights Commission, political actors, including senior government officials, frequently promote xenophobic talking points and engender a culture of impunity regarding perpetrators of crimes against migrants. This has exacerbated xenophobia in South African politics and the broader society.

In 2021, the “Operation Dudula” (which news reports translate to Operation “Beat Back” or “Force Out”) campaign was launched by certain political groups to mobilize anti-migrant and xenophobic public sentiment into action. The campaign has led to the stigmatization of foreign nationals in South Africa, as well as violent outbursts, which have included attacks on migrant-owned businesses and homes, and even the killing of at least one person, a Zimbabwean national living in South Africa.

### *Historical Context*

Xenophobia has been a persistent issue in South African politics and society for decades. During the era of apartheid, the South African government maintained the discriminatory and exclusionary “two gates policy”, which differentiated between black migrants and white migrants entering South Africa. Between 1948 and 1994, the apartheid government enabled the

systemic exploitation of foreign nationals through the migrant labor system, which stretched across the whole region to satisfy the workforce demand of mines and farms in Zimbabwe, Namibia, Zambia, Swaziland and Botswana, with the core of the economic system remaining in apartheid South Africa. According to the information received by our mandates, racial discrimination effectively remains legislated in contemporary immigration policy and enshrined in public rhetoric.

Black foreign nationals in South Africa bear the brunt of racial discrimination and xenophobia, which is perpetuated both by Government institutions and the broader public. Xenophobic discrimination against foreign nationals from Africa is frequently linked to racial discrimination based on race, colour, and national or ethnic origin. This racial discrimination does not only affect foreign nationals; in certain cases, South African citizens have also fallen victim to xenophobia because they are perceived in racist terms as “too dark to be South African”.

In December 1994, just after the end of apartheid, protesters in Alexandra Township marched on their local police station to demand that all Malawians, Mozambicans and Zimbabweans “go home”, leading to the anti-immigrant riots known as “Operation Buyelekhaya” (Go Back Home) in December 1994 and January 1995. In 1995, Malawians, Zimbabweans and Mozambicans were marched to a police station in a “clean up drive”. In 1998, two Senegalese nationals and one Mozambican national were thrown from a moving train in Johannesburg in an apparent xenophobic attack.

In 2000, seven foreign nationals were killed on the Cape Flats over a period of five weeks. Police alleged that these xenophobic murders were potentially motivated by the fear that outsiders would claim property belonging to locals.

Between 2005 and 2006, at least four people, including two Zimbabweans, died in the Olievenhoutbosch settlement after foreign nationals were blamed for the death of a local man. Foreign nationals’ homes were set alight in acts of arson.

In July 2006, 21 Somali traders were killed. The following month, 26 Somali traders were killed. Somali nationals in South Africa alleged the murders were motivated by xenophobia and a campaign to drive Somali traders out of townships in the Western Cape, but they received little support from the police, who rejected these allegations.

In 2008, a wave of xenophobic violence spread throughout South Africa. The victims of the attacks were both South African nationals and foreign nationals, and the violence revealed the presence of powerful xenophobic sentiments in certain segments of South African society. Two Somali shop owners were murdered in Jeffreys Bay and East London, while seven people, including Zimbabwean nationals, Pakistani nationals and a Somali national, were killed and their shops and shacks set alight in acts of arson in Atteridgeville outside Pretoria.

Also in 2008, xenophobic riots erupted in Alexandra. Two people were killed and 40 injured. The violence spread to other settlements in Gauteng, Durban and Cape Town. Attacks were reported in Mpumalanga, North West and the

Free State, and 62 people were killed. A 2008 report from the Human Science Research Council found that more than sixteen thousand people in Gauteng alone were forced to find alternative living arrangements.

According to the information received, prior to 2008, xenophobic attacks on foreigners were isolated and random, while the 2008 attacks were sustained and had an unprecedented scale of the violence. This signaled a worsening trend of xenophobic violence which has periodically surged several times since.

In November 2009, between between 1,500 and 2,500 Zimbabwean farmworkers were evicted from their homes in the informal settlements of De Doorns, Western Cape. In the violence, their homes were looted and destroyed.

In June 2014, Somali nationals in South Africa were targeted by xenophobic attacks, including stoning. At least two people were killed.

In April 2015, another upsurge in xenophobic attacks spread across South Africa. The violence began in Durban after Goodwill Zwelithini, then the reigning King of the Zulu nation, was alleged to have stated that foreigners should “go back to their countries”. At that time, the King’s staff denied that he made such comments, and claimed that he was mistranslated and quoted without context. Allegations of xenophobic attacks and displacement between 2014 and 2015 were described in detail in Communication [AL ZAF 1/2015](#), dated 1 May 2015, issued by the Mandates of the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Working Group of experts on people of African descent.

In June 2016, shops in the Tshwane metropole of Gauteng Province which were owned by foreign nationals were targeted for violence and looted in response to the governing African National Congress’s choice of a mayoral candidate.

In March 2019, xenophobic riots targeting African immigrants broke out in Durban. About 100 people attacked businesses owned by foreign nationals; approximately 50 people sought shelter in a local police station and mosque. Three people were killed.

In September 2019, riots and looting affected shops owned by foreign nationals in Jeppestown and the Johannesburg inner city. About 50 businesses, predominantly owned by Nigerians, were looted. In a nationwide strike, truck drivers protested the employment of non-South African truckers. Twelve people were killed.

In 2021, the “Operation Dudula” campaign was launched by certain political groups to mobilize anti-migrant and xenophobic public rhetoric and action. The campaign has led to the stigmatization of foreign nationals and violent outbursts, which have included attacks on migrant-owned businesses and homes.

### *Legal and Policy Framework*

The information shared with our mandates raises serious concerns over the institutionalised xenophobia that exists in South Africa, as South African officials continue to exclude and stigmatize migrants despite their obligations under international refugee law and international human rights law.

At the same time, civil society actors allege that the South African Government has adopted a practice of “xenophobic denialism”, wherein the Government denies responsibility for xenophobic violence and alleges that the victimization of migrants is attributable to individual criminals and the migrants themselves. Migrants in South Africa frequently encounter a hostile environment which limits their effective enjoyment of constitutional and legal rights and their ability to access basic services and resources. Furthermore, the presence of foreign nationals in South Africa is negatively presented by Government actors and vocal portions of the population. As a result, xenophobic attitudes have become entrenched in South Africa.

The stigmatization of South Africa’s migrant communities has significant implications for migrants’ access to the right to health. Migrants in South Africa struggle with lack of access to legal documentation, cultural and communication barriers, discrimination in healthcare, significant mental health challenges, and health issues associated with overcrowding and occupational risks. There are allegations that refugees, asylum seekers, foreign nationals and undocumented migrants are often turned away from hospitals and clinics, and they are therefore denied health care, or are asked to pay up front, with different hospitals charging different fees.

Detention and deportation remain the primary tools of immigration enforcement in South Africa. Despite legal protections for asylum seekers, refugees and other migrants, civil society monitors have found that detention and deportation of foreign nationals continue to be regularly carried out in an unlawful manner. Reportedly, South African authorities have continued to arrest newly arrived asylum seekers, and the Government lacks formalized, independent oversight of immigration detention, allows deplorable conditions at detention centres, inconsistently applies procedural safeguards and statutory limits, and arrest asylum seekers with expired documentation due to the partial or complete closure of refugee reception offices.

According to civil society reports, oversight bodies face difficulties in terms of mandates, budgets and institutional independence from the government departments they supervise. Allegedly, there is no monitoring of police stations and their detention facilities, and there are no adequate safeguards in place to protect complainants from reprisals in detention centres.

In some instances, authorities have allegedly dismissed asylum cases without full consideration of the evidence, which has resulted in a significant reduction in the number of persons being granted refugee status and has led to asylum seekers living in constant fear of deportation. Allegedly, some immigration officers refuse to provide even genuine asylum seekers with asylum transit visas at their port of entry, thereby exposing them to immediate risk of arrest

or deportation, and there are reports that some refugee status determination officers are canceling or refusing to extend asylum transit visas if not given a bribe.

The Immigration Act of 2002 provides for the holding of an “illegal foreigner” in custody for up to 120 days without a court hearing. At the Lindela Repatriation Centre, conditions include overcrowding and a lack of hygiene and medical services. Civil society organizations report that there is a proposal to create detention facilities at the country’s borders that would house asylum seekers while their applications were processed and would limit their rights to work and movement.

In 2010, the South African Human Rights Commission (“SAHRC”) published its “Report on the SAHRC Investigation into Issues of Rule of Law, Justice and Impunity arising out of the 2008 Public Violence against Non-Nationals”. In its report, the SAHRC made detailed recommendations to all relevant Government stakeholders. According to the information provided, to date none of the recommendations in this report have been implemented by the relevant State entities.

Xenophobic attacks against foreign nationals, refugees and asylum seekers, including violence and threats of violence, have resulted in dozens of deaths, the destruction of property and displacement. According to the information provided, no one has been convicted for past outbreaks of xenophobic violence, signaling a culture of impunity and a failure of the Government to guarantee remedies and reparations for victims of xenophobic or racist human rights violations.

#### *Ongoing Xenophobic Mobilizations and Violence, 2021–2022*

In June 2021, a social media campaign under the banner of “Operation Dudula” was launched, followed by a march through Soweto targeting “illegal foreigners” and migrants. Widespread civil unrest ensued.

Persons affiliated with “Operation Dudula” commonly act as vigilantes, seeking out foreign nationals and demanding they produce documents which prove their immigration status. Actors affiliated with the movement have frequently protested businesses which employ foreign nationals and publicly blamed migrants, refugees and asylum seekers for rising crime, economic inequality and drug use. News media report that the xenophobic mobilizations have also been organized around the slogan “#PutSouthAfricansFirst”, first used in 2020, which justifies the xenophobic mobilizations by blaming foreign nationals for inequality and the lack of economic opportunities in South Africa.

In February and March 2022, persons associated with the “Operation Dudula” campaign marched on Hillbrow and Orange Grove, targeting foreign nationals and businesses suspected of employing foreign nationals. These marches galvanized the larger regional spread of “Operation Dudula”. Social media posts were used to drum up support and mobilise protesters. Both protests resulted in clashes with the police.

In April 2022, persons associated with “Operation Dudula” raided businesses in Seshego, Limpopo. Those involved claimed to be supporting “families of seven women killed by [a] Zimbabwean serial killer”.

On 6th April 2022, Diepsloot, Johannesburg residents protested against a lack of policing and crime they say is perpetrated by “undocumented” foreign nationals after the death of five South Africans in the township.

On 8th April 2022 a 43-year-old Zimbabwean national and father of four, was killed in Diepsloot by a mob going door to door demanding to see visas. The attackers drove the man out of a place where he was seeking refuge, beat him and set him on fire.

On 12 April 2022, persons associated with “Operation Dudula” raided Germiston in another xenophobic mobilization.

In June 2022, news media reported that approximately 400 seasonal migrant workers in Hankey in the Eastern Cape were forcefully evicted from their homes, following clashes near the town a week earlier. According to police reports, two South Africa nationals and one Lesotho national were killed in the clashes and several houses in an informal migrant settlement were razed. The clashes were apparently “retaliation” for the murder of two locals by unknown persons.

While we do not wish to prejudge the accuracy of these allegations, we express our grave concern that widespread xenophobia, racist violence and racial and xenophobic discrimination against foreign nationals continues unabated in South Africa. The cost in human dignity and lives, particularly in light of the past 30 years of xenophobic mobilizations, remains widespread and deeply troubling. We are gravely concerned that the State’s positive obligations to protect and promote human rights and prevent racial and xenophobic discrimination are not being met, and that further, there is widespread impunity for xenophobic rhetoric and violence, leading to a lack of accountability for serious human rights violations and the promotion of racist and xenophobic ideologies.

We are concerned that discrimination against foreign nationals in South Africa has been institutionalized both in Government and in broader society, leading to violations of the right to life and physical integrity and the rights to an adequate standard of living and to the highest attainable standard of health as well as elevated risks of arbitrary detention, torture and *refoulement*. Allegedly, widespread corruption in the South African asylum and migration systems compounds these dangerous problems.

We note the Government’s [National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance](#), published in 2019, makes important commitments, including that the Government “should send out clear messages that violence against foreign nationals and xenophobic attacks will not be tolerated and that those involved in such activities will be prosecuted.” However, we observe a mismatch between the important commitments contained in the National Action Plan and the actions taken by some senior government officials, who continue to embrace anti-migrant rhetoric and policies, as well as widespread impunity for xenophobic violence. We welcome the opportunity to work with your Excellency’s

Government to ensure that the full commitments of your National Action Plan are operationalized, and we encourage your Excellency's Government to make full use of the combined expertise and resources of our mandates, the Office of the High Commissioner for Human Rights and the African Commission on Human and Peoples' Rights.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please report on the status of complaints lodged by migrant victims of xenophobic violence or by their relatives. If complaints have been filed, please provide the details, and where available the results, of any investigation, judicial or other inquiries which may have been carried out in relation to these incidents. Please explain whether any such inquiries have been conducted in accordance with applicable international standards. If no inquiries have taken place, or if they have been inconclusive, please explain why. If prosecutions have been undertaken, please provide the sanctions imposed on the alleged perpetrators;
3. Please detail the efforts your Government is taking to prevent further outbreaks of xenophobic violence and guarantee accountability for racially-motivated human rights violations;
4. Please provide information on the measures taken to prevent the propagation of racist and xenophobic statements, including against migrants by public officials and to hold persons responsible for such acts accountable;
5. Please detail how your Government is taking steps to ensure that everyone, without distinction as to race, colour, or national or ethnic origin and/or migration status is guaranteed equality before the law, as well as substantive equality in the enjoyment of civil, political, economic, social and cultural rights;
6. Please indicate whether compensation has been provided to the victims or the families of the victims of xenophobic attacks;
7. Please describe Government efforts to encourage integrationist multiracial organizations and movements and other means of eliminating barriers between South African citizens and foreign nationals;

8. Please explain how the Government intends to address racial or ethnic profiling and unlawful use of force against migrants, refugees and asylum seekers by vigilante groups in the country, in order to comply with their obligation to respect and ensure the right to life and physical integrity guaranteed to all without discrimination;
9. Please provide information on bills and legislation at the local and national levels that have the purpose or effect of economic exclusion of non-nationals;
10. Please describe how your Excellency's Government intends to continue fulfilling its obligations under international human rights law and international refugee law in light of the challenges of the COVID-19 pandemic;
11. Please detail efforts to eliminate corruption and impunity in the asylum system, with the understanding that such corruption leads to violations of asylum seekers' and refugees' rights under international human rights law and international refugee law.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

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## Annex

### Reference to international human rights law

In connection with above alleged facts and concerns, we would like to remind to your Excellency's Government of its obligations under the **International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD")**, which it ratified on 10 December 1998.

ICERD defines prohibited racial discrimination in **article 1, paragraph 1** as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

In particular, we would like to refer to **article 2, paragraph 1**, which obliges States Parties to condemn racial discrimination and to pursue, by all appropriate means and without delay, a policy of eliminating racial discrimination in all its forms. In addition, **article 4 (b)** of the Convention holds that State parties shall prohibit organizations and activities which promote or incite racial discrimination punishable by law. **Article 5** provides that State parties have the obligation to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution, as well as economic, social and cultural rights. We also recall **article 6**, which states that State parties shall assure to everyone within their jurisdiction effective protection and remedies through the competent national tribunals and State institutions.

Furthermore, we would like to draw the attention of your Excellency's Government to **General Recommendation No. 30 of the Committee on the Elimination of Racial Discrimination on "Discrimination Against Non-Citizens"**. The Committee urges States to address xenophobic attitudes and behavior towards non-citizens, ensure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status and guarantee that non-citizens enjoy equal protection of the law. The General Comment also includes important guidance on protecting the security of non-citizens.

In General Recommendation No. 30, the Committee also recommended that States "remove obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens, notably in the areas of education, housing, employment and health" (para. 29).

In its **General Recommendation No. 35 on combatting racist hate speech**, the Committee on the Elimination of Racial Discrimination states that the "identification and combating of hate speech practices is integral to the achievement of the objectives of [ICERD] — which is dedicated to the elimination of racial discrimination in all its forms" (para. 8). Aware of the special importance of freedom of speech in political matters and that its exercise carries with it special duties and responsibilities, the Committee has drawn attention to the role of politicians and other

public leaders, who can contribute to the creation of a negative climate concerning racially marginalized groups. The Committee has encouraged public bodies and politicians to adopt positive approaches directed to promoting intercultural understanding and harmony.

Significantly, the Committee recalls that the proscription of racist hate speech and the flourishing of freedom of expression are complementary and do not represent a “zero-sum game” (para. 45).

We recall that the approach in General Recommendation No. 35 is adapted from the **Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence**. In the Rabat Plan of Action, the Office of the United Nations High Commissioner for Human Rights (OHCHR) suggests a high threshold for restrictions on freedom of expression. The Plan of Action outlines a six-part threshold test which takes into account the context, speaker, intent and content, as well as the likelihood to cause harm and the extent of that harm. The Rabat Plan of Action recommends that domestic legal frameworks on incitement to hatred expressly reference article 20, paragraph of the International Covenant on Civil and Political Rights and include robust definitions of key terms, such as hatred, discrimination, violence and hostility, as defined by the Camden Principles on Freedom of Expression and Equality. We refer to the **International Covenant on Civil and Political Rights (ICCPR)** which South Africa ratified on 10 December 1998, particularly article 2, which guarantees the right to remedy, and article 6, which guarantees the right to life.

In the Human Rights Committee’s **General Comment 36 on the right to life**, the Committee observes that: “The duty to protect the right to life requires States parties to take special measures of protection towards persons in situation of vulnerability whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence. These include human rights defenders ... members of ethnic and religious minorities ... displaced persons, asylum seekers, refugees and stateless persons” (para. 26) The Committee also reaffirms that:

“The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. ... An important element of the protection afforded to the right to life by the Covenant is the obligation on the States parties, where they know or should have known of potentially unlawful deprivations of life, to investigate and, where appropriate, prosecute such incidents” (paras. 26–27).

In conclusion, State parties’ obligation to respect the right to life requires governments to respond “urgently and effectively” in order to protect individuals who find themselves under a specific threat, including by adopting special measures such as the assignment of around-the-clock police protection.

**Article 19 of the International Covenant on Civil and Political Rights** protects freedom of opinion and expression, which may be restricted only in law and when such restrictions are necessary for respect of the rights or reputations of others and the protection of national security or of public order, or of public health or morals. Any restriction on freedom of speech must not only be a matter of necessity but must

be proportionately tailored to achieve the legitimate end that warrants the restriction.

**Article 20, paragraph 2 of the ICCPR** requires that “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” The Human Rights Committee and a number of human rights mechanisms have interpreted this provision as creating a high threshold because the limitation of speech must remain exceptional.

We recall the prohibitions on racist hate speech in the ICCPR should also be read in conjunction with article 4 of ICERD and should be balanced along the lines laid down in the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred.

Furthermore, we would like to bring to your Government’s attention **article 26 of the ICCPR** stating that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

We would like to draw your attention to **article 3** of the Universal Declaration of Human Rights which states that “Everyone has the right to life, liberty and security of person”; and **article 6 (1) of the ICCPR**, which provides that “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”. In this regard, we would like to highlight that the enjoyment of the rights guaranteed in the ICCPR is not limited to citizens of States parties but “must also be available to all individuals, regardless of their nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party” (ICCPR/C/21/Rev.1/Add. 13 (2004), Para. 10). Furthermore, we recall that an important element of the protection afforded to the right to life by the Covenant is the obligation on the States parties, where they know or should have known of potentially unlawful deprivations of life, to investigate and, where appropriate, prosecute the perpetrators of such incidents, including incidents involving allegations of excessive use of force with lethal consequences.

We would like to remind your Excellency’s government of its obligations under the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, ratified by South Africa on 12 January 2015, to respect, protect and fulfill several human rights on the basis of non-discrimination and equality, particularly the right to an adequate standard of living, which includes the right to adequate housing and the right to health. In terms of the right to health, we would also like to specifically highlight **article 12**, which recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” In this connection, the Committee on Economic, Social and Cultural Rights has established that States must ensure that health-care goods, services and facilities are available in adequate quantity (availability); are financially, geographically and physically accessible, including accessible information and communication, without discrimination (accessibility); are respectful of medical ethics, culturally appropriate and sensitive to gender and life-cycle requirements (acceptability); and scientifically and medically appropriate and of good quality (quality). These requirements are

articulated in the Committee's **General Comment No. 14 on the right to health**. In particular, General Comment No. 14 reminds States parties to ICESCR that they have a specific legal obligation to “*respect* the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services”.

Furthermore, **article 11(1) of the ICESCR** stipulates that States “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions” and requires them to “take appropriate steps to ensure the realization of this right”.

We wish to draw the attention of your Excellency's Government to **article 7** on the prohibition of torture or cruel, inhuman or degrading treatment or punishment, of the ICCPR, and to the right of all individuals, including migrants and asylum seekers, to the enjoyment of the highest attainable standard of physical and mental health, which is stated on **article 12** of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

In the **Durban Declaration and Programme of Action**, the international community emphasized that “that poverty, underdevelopment, marginalization, social exclusion and economic disparities are closely associated with racism, racial discrimination, xenophobia and related intolerance, and contribute to the persistence of racist attitudes and practices which in turn generate more poverty” (Declaration, para. 18). It further recognized that “xenophobia against non-nationals, particularly migrants, refugees and asylum-seekers, constitutes one of the main sources of contemporary racism and that human rights violations against members of such groups occur widely in the context of discriminatory, xenophobic and racist practices” (Declaration, para. 16), and the Durban Programme of Action laid out several action steps to combat racial discrimination and xenophobia against migrants, refugees, asylum seekers, stateless persons and displaced persons. Of particular relevance, paragraph 115 of the Programme of Action underlined “the key role that politicians and political parties can play in combating racism, racial discrimination, xenophobia and related intolerance” and encouraged “political parties to take concrete steps to promote equality, solidarity and non-discrimination in society, *inter alia* by developing voluntary codes of conduct which include internal disciplinary measures for violations thereof, so their members refrain from public statements and actions that encourage or incite racism, racial discrimination, xenophobia and related intolerance”.

The Durban Declaration condemns the persistence and resurgence of neo-Nazism, neo-Fascism and violent nationalist ideologies based on racial or national prejudice (para. 84). The Declaration also condemns political platforms and organizations based on doctrines of racial superiority and related discrimination, as well as legislation and practices based on racism, racial discrimination, xenophobia and related intolerance. Furthermore, it reaffirms, in paragraph 94, that the stigmatization of people of different origins by acts or omissions of public authorities, institutions, the media, political parties or national or local organizations is an act of racial discrimination and can also incite the occurrence of such acts, reinforcing racist attitudes and prejudices.

The **Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions**, (resolution 1989/65 Economic and Social Council) recall States' duty to conduct thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions and the obligation to bring to justice all persons identified by the investigation as having participated in those executions. They also provide for the effective protection through judicial or other means of individuals and groups who are in danger of extra-legal, arbitrary or summary executions. The families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time. We also refer your Excellency's Government to the Minnesota Protocol on the Investigation of Potentially Unlawful Death, which supplements the Principles.

The **Guiding Principles on Extreme Poverty and Human Rights**, which were adopted by consensus by the Human Rights Council on 27 September 2012, in resolution 21/11, recommend, in particular, that States "adopt laws that protect all individuals, groups and communities, including those living in poverty, against forced evictions by State and non-State actors. This should include preventive measures to avoid and/or eliminate the underlying causes of forced evictions, such as land and property speculation" (para. 80 (b)). The Guiding Principles on Extreme Poverty and Human Rights also recommend that States "ensure that persons living in poverty are equal before and under the law and are entitled, without discrimination, to the equal protection and benefit of the law. States must repeal or modify laws and regulations that are biased against the rights, interests and livelihoods of persons living in poverty. All forms of legislative or administrative discrimination, direct or indirect, on grounds of economic situation or other grounds associated with poverty must be identified and eliminated".

We recall the **Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms**, adopted by the General Assembly resolution 53/144, which in article 10 states "[n]o one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so." Further, in article 18, paragraph 3, the Declaration affirms that "[i]ndividuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized".

We encourage your Government to consult the **report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance concerning the "threat posed by nationalist populism to the fundamental human rights principles of non-discrimination and equality"** (A/73/305). This report identifies nationalist populism as a resurgent threat to the promotion and protection of human rights, and it traces how nationalist populism enables exclusionary or repressive practices and policies that harm individuals or groups on the basis of their race, ethnicity, national origin and religion, including in combination with gender, sexual orientation, disability status, migratory status or other related social categories.

We would like to remind your Government of the principle of non-*refoulement*, which forms an essential protection under international human rights, refugee, humanitarian and customary law. Non-*refoulement* prohibits all forms of removal and transfer of any individual, regardless of their status, when there are substantial grounds for believing that the individual would be at risk of irreparable harm, such as death, torture or cruel, inhuman or degrading treatment or punishment, persecution, enforced disappearance or other serious human rights violations, in the place to which they are to be transferred or removed. The principle of non-*refoulement* under international human rights law is characterized by its absolute nature without any exception, applying to all persons, including all migrants, at all times, irrespective of their citizenship, nationality, statelessness or migration status.

We recall the **African Charter on Human and Peoples' Rights**, also known as the Banjul Charter, which South Africa ratified on 9 July 1996. Article 2 of the Banjul Charter states that “[e]very individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.” In this regard, article 4 emphasizes that: “Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.” We also recall that article 12, paragraph 5 of the Banjul Charter prohibits mass expulsion of non-nationals, which it defines as expulsion “which is aimed at national, racial, ethnic or religious groups”.