

XENOPHOBIA AND THE RIGHT TO LIFE: EXAMINING STATE OBLIGATIONS UNDER INTERNATIONAL HUMAN RIGHTS LAW AND JURISPRUDENCE

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ABSTRACT

Xenophobic violence poses a critical threat to the sanctity of human life. The legal and moral dimensions of xenophobia reflect both a failure of state protection and a breakdown of ethical responsibility within society. This work set out to determine to what extent xenophobic violence has undermined the legal concept of the sanctity of life; to find out who bears responsibility for such acts—states, individuals, or both; and to recommend measures that can be adopted to mitigate this growing threat. Using a doctrinal and analytical approach, the work focused on recurrent xenophobic attacks, particularly in South Africa, to demonstrate the gap between legal norms and practical enforcement. Drawing on constitutional provisions, regional human rights instruments, and international law, the work analysed the extent to which existing legal frameworks safeguard or are inadequate in safeguarding the right to life and the protection of non-nationals from targeted violence. It explored judicial interpretations of the principles of the right to life, due diligence, and moral philosophy, emphasising the concept of human dignity and universal moral responsibility. It found that xenophobic violence represents not merely a failure of law enforcement but a deeper moral crisis that necessitates a reinvigoration of both legal mechanisms and ethical consciousness. It recommended strengthened legal mechanisms, civic education, and regional cooperation to protect the sanctity of life and promote social cohesion in plural societies. The study concluded that addressing xenophobic violence requires an integrated response that combines effective legal enforcement, institutional accountability, political responsibility, and moral reorientation.

Keywords: *xenophobic violence, sanctity of life, moral responsibility, criminal responsibility*

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1. INTRODUCTION

Xenophobic violence has emerged as one of the most troubling manifestations of social intolerance in contemporary societies, posing a direct threat to the sanctity of human life. Across parts of Africa, particularly in South Africa, recurring attacks against foreign nationals have resulted in widespread destruction of property, displacement, and, most significantly, loss of life. These acts, often justified on economic or cultural grounds, reflect a dangerous erosion of the fundamental principle that every human life possesses inherent worth and dignity irrespective of nationality. The sanctity of life, deeply embedded in both legal and moral philosophy, underpins modern human rights law and constitutional governance. It is reflected in various legal frameworks, including the right to life provisions in national constitutions and international human rights instruments. However, the persistence of xenophobic violence raises critical questions about the effectiveness of these legal protections and the extent to which states and individuals uphold their moral and legal obligations.

This article interrogates the tension between the legal recognition of the sanctity of life and the lived reality of xenophobic violence. It examines whether existing legal frameworks sufficiently address the phenomenon and to what extent moral responsibility can complement legal accountability. The central questions guiding this study are: to what extent does xenophobic violence undermine the legal concept of the sanctity of life? Who bears responsibility for such acts—states, individuals, or both? And what measures can be adopted to mitigate this growing threat? Adopting a doctrinal and analytical methodology, this article focuses primarily on Africa, with particular emphasis on South Africa as a case study, while drawing limited comparative insights from other jurisdictions.

The work is divided into 8 sections. The first is thematic, covering concepts germane to the work. The second and third sections cover xenophobia in the extant constitutional framework and protection available at regional and international levels, respectively. The preceding sections examine moral and philosophical perspectives on xenophobia, criminal responsibility for xenophobia, and its implications for human rights and social order. Lastly, the work ends with our recommendations and conclusion.

1.1 Conceptual Clarification

1.1.1 *Xenophobia*

The term *xenophobia* is not always expressly defined in municipal statutes; however, its meaning can be distilled from legal and authoritative sources. *Xenophobia*¹ denotes behaviour specifically based on the perception that the other is foreign or originates from outside the community or nation. According to the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, xenophobia exists when individuals or groups of individuals do not enjoy the same rights as the rest of the population because of their real or perceived geographical origin, or when the values, beliefs and/or practices associated with them make them appear as foreigners. This definition highlights two critical elements: fear or hostility, and its direction toward non-nationals. In legal discourse, xenophobia often manifests through discriminatory practices, exclusionary policies, or, in extreme cases, violence against foreigners. While not always codified as a distinct offence, xenophobic conduct frequently intersects with established legal violations such as assault, arson, murder, and violations of fundamental human rights. Closely linked to this is the crime against humanity as encapsulated in the Rome Statute of the International Criminal Court².

Within the African context, xenophobia is closely linked to migration patterns, economic competition, and political narratives that frame foreign nationals as threats to local opportunities. In countries like South Africa, this has led to repeated outbreaks of violence targeting migrants from other African states, thereby elevating xenophobia from a mere social attitude to a significant legal and human rights concern. *Xenophobia simpliciter* can be described as the fear, prejudice, or hostility toward people who are perceived as foreign, outsiders, or from a different national, ethnic, or cultural background, often resulting in discrimination or exclusion. This definition captures both the emotional aspect (fear or prejudice) and the behavioural consequences (hostility, discrimination, or exclusion), making it broad enough for academic analysis while reflecting how the concept is commonly understood in social science literature.

1 United Nations Committee on the Elimination of Racial Discrimination (CERD) and Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Joint General Recommendation No 38 (2025) and General Comment No 7 (2025) on General Guidelines for Eradicating Xenophobia towards Migrants and Others Perceived as Such, UN Doc CERD/C/GC/38–CMW/C/GC/7 (3 February 2026) para 13.

2 Article 7(1)(h) of the Rome Statute defines the crime against humanity of persecution as the intentional and severe deprivation of fundamental rights based on political, racial, national, ethnic, cultural, religious, gender, or other universally impermissible grounds.

1.1.2 *Sanctity of Life*

The concept of the sanctity of life occupies a central position in both legal theory and human rights jurisprudence. Although statutory provisions do not always define it expressly, it is firmly rooted in the recognition of the inherent value and inviolability of human life. In legal terms, the sanctity of life finds its most direct expression in the right to life, which has been described as the “most fundamental of all rights,” forming the basis upon which all other rights depend.³ Under Nigerian law, the right to life is constitutionally guaranteed. Section 33(1) of the Constitution of the Federal Republic of Nigeria 1999 provides that every person has a right to life and that no one shall be intentionally deprived of this right except in execution of a court sentence or in circumstances permitted by law.⁴ This provision reflects the legal embodiment of the sanctity of life, placing a duty on the state to protect life and prevent arbitrary deprivation.

At the regional level, Article 4 of the African Charter on Human and Peoples’ Rights similarly affirms that human beings are inviolable and that every human being shall be entitled to respect for his life and the integrity of his person.⁵ The term “inviolable” underscores the non-derogable nature of this right, reinforcing its foundational status within the human rights framework. From a jurisprudential standpoint, the sanctity of life is closely tied to the concept of human dignity, which recognises that every individual possesses intrinsic worth irrespective of nationality, status, or origin. Xenophobic violence, by targeting individuals solely on the basis of their foreign identity, directly contradicts this principle and undermines the legal and moral foundations upon which the right to life is built. This work is inclined towards this view, and contextualises its findings as such.

1.1.3 *Moral Responsibility and Legal Responsibility*

A distinction must be drawn between legal responsibility and moral responsibility, although the two are often interconnected. Legal responsibility refers to obligations imposed and enforced by law, the breach of which attracts sanctions such as criminal liability or civil penalties.⁶ In the context of xenophobic violence, individuals who perpetrate acts such as assault or murder are subject to prosecution under existing criminal laws. Moral responsibility, on the other hand, extends beyond codified rules and encompasses the ethical obligations individuals and societies owe to one another. It is grounded in principles of right and wrong, justice, and the recognition of shared humanity. While the law may punish the direct perpetrators of xenophobic violence, moral responsibility also implicates a broader range of

3 Ibid.

4 Constitution of the Federal Republic of Nigeria 1999 (as amended), s 33(1).

5 African Charter on Human and Peoples’ Rights (1981), Article 4.

6 Bryan A Garner and others (eds), *Black’s Law Dictionary* (11th edn, Thomson Reuters 2019).

actors, including political leaders, institutions, and even communities that tolerate or perpetuate hostile attitudes toward foreigners.

The interplay between legal and moral responsibility is therefore crucial. While legal frameworks provide mechanisms for accountability, they are often reactive rather than preventive. Moral responsibility, by contrast, has the potential to shape attitudes, influence behaviour, and foster a culture of respect for human life. Addressing xenophobic violence effectively, thus, requires a synthesis of both approaches, ensuring that legal enforcement is complemented by ethical awareness and social responsibility.

2. XENOPHOBIC VIOLENCE IN AFRICA

Xenophobic violence has become a recurring and deeply troubling phenomenon across parts of Africa, manifesting in varying degrees of intensity but consistently undermining the sanctity of human life. While migration within the continent has historically been fluid and often beneficial, recent socio-economic pressures, political narratives, and weak institutional responses have contributed to the rise of hostility toward foreign nationals.

2.1. Case Study: South Africa

The most prominent and extensively documented instances of xenophobic violence in Africa have occurred in South Africa. Since the early 2000s, the country has witnessed periodic outbreaks of violence directed at foreign nationals, particularly migrants from other African states such as Zimbabwe, Mozambique, Nigeria, and Somalia⁷. The 2008 xenophobic attacks marked a turning point, resulting in the deaths of over 60 individuals and the displacement of thousands. Subsequent incidents in 2015 and 2019 further underscored the persistence of the problem, with widespread looting, arson, and killings.⁸. These attacks are often justified by perpetrators on the grounds that foreign nationals “steal jobs,” depress wages, or contribute to crime. However, such claims are rarely supported by empirical evidence and instead reflect deeper socio-economic frustrations, including high unemployment, inequality, and inadequate service delivery.⁹

Although South Africa did not experience a nationwide wave of xenophobic violence in 2025 comparable to previous outbreaks, anti-immigrant sentiment remained high and laid the foundation for renewed attacks in 2026. During 2026, vigilante groups and anti-immigration movements intensified protests in several provinces, particularly in Gauteng,

7 Human Sciences Research Council Repository ‘Citizenship, Violence and Xenophobia in South Africa: Perceptions from South African Communities’ <https://repository.hsrb.ac.za/handle/20.500.11910/5374> accessed 23 June 2026.

8 Ibid.

9 Loren B Landau (ed), *Exorcising the Demons Within: Xenophobia, Violence and Statecraft in Contemporary South Africa* (Wits University Press 2011) <https://digitallibrary.un.org/record/734947> accessed 23 June 2026.

where foreign nationals were subjected to intimidation, assaults, looting, forced evictions, and the destruction of businesses¹⁰. The violence was largely driven by perceptions that migrants were responsible for unemployment, crime, and pressure on public services, despite the absence of evidence supporting these claims. The resurgence of xenophobic attacks prompted widespread condemnation from the African Union, the African Commission on Human and Peoples' Rights, neighbouring African states, and international human rights organisations, all of which called on the South African government to strengthen law enforcement and protect foreign nationals. Although the South African government publicly denounced the attacks and pledged to prosecute perpetrators, concerns remained regarding the adequacy of the state's response and the persistence of anti-immigrant violence within the country.¹¹ The targeting of non-nationals becomes a scapegoating mechanism, diverting attention from structural governance failures.

From a legal perspective, the South African Constitution guarantees the right to life and dignity to “everyone,” not merely citizens.¹² This inclusive language aligns with international human rights standards, emphasising that fundamental rights attach to all human beings irrespective of nationality. Despite this, the recurrence of xenophobic violence reveals a significant gap between constitutional ideals and lived realities. Moreover, the response of state authorities has often been criticised as inadequate. While security forces are occasionally deployed to quell violence, preventive measures and long-term strategies remain insufficient. The failure to effectively investigate and prosecute perpetrators further contributes to a culture of impunity, weakening public confidence in the rule of law.

2.2 Causes and Patterns of Xenophobic Violence

An examination of xenophobic violence across Africa reveals several recurring causes and patterns. Generally speaking, it would appear that the following are common causes. First, economic insecurity tends to play a central role. High unemployment rates and limited economic opportunities create competition for scarce resources, leading locals to perceive migrants as direct threats to their livelihoods. This perception, whether accurate or not, often fuels resentment and hostility. Statements by political actors that implicitly or explicitly blame foreigners for domestic challenges can legitimise xenophobic attitudes and embolden violent behaviour. Similarly, weak law enforcement and accountability mechanisms enable the persistence of violence. Where perpetrators are not promptly arrested and prosecuted, a culture

10Human Rights Watch, *South Africa: New Waves of Xenophobic Attacks* (20 May 2026) <https://www.hrw.org/news/2026/05/20/south-africa-new-waves-of-xenophobic-attacks> accessed 28 July 2026.

11 Ibid.

12 Constitution of the Republic of South Africa 1996, s 11.

of impunity develops, encouraging further attacks. This represents a failure of the state to discharge its primary duty of protecting life and maintaining order. Finally, social and cultural factors, including prejudice, misinformation, and lack of integration, exacerbate tensions between locals and migrants. The portrayal of foreigners as “outsiders” or “others” fosters division and undermines social cohesion.

2.3 Legal and Human Rights Implications

The prevalence of xenophobic violence raises profound legal and human rights concerns. At its core, such violence constitutes a direct violation of the right to life, as well as related rights such as dignity, security of the person, and freedom from discrimination.¹³ Furthermore, states may incur international responsibility where they fail to exercise due diligence in preventing, investigating, and punishing acts of violence against foreign nationals. Under international human rights law, the obligation to protect life extends beyond refraining from unlawful killings; it also includes taking proactive measures to safeguard individuals within a state’s jurisdiction.

It is captured under the African Charter on Human and Peoples’ Rights 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.”¹⁴ Similarly, Article 5 states as follows: “Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment, shall be prohibited.”¹⁵ In addition, it is stipulated as follows: “All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.”¹⁶ Xenophobic violence presents not only individual criminal conduct but also a broader systemic failure that implicates state responsibility. It underscores the urgent need for stronger legal enforcement, institutional reform, and a renewed commitment to the protection and preservation of human life.

3. LEGAL FRAMEWORKS AND PROTECTIONS

The protection of human life against xenophobic violence is grounded in a network of constitutional, regional, and international legal frameworks. These frameworks collectively impose obligations on states not only to refrain from unlawful deprivation of life but also to actively protect all persons within their jurisdiction, irrespective of nationality.

13 African Charter on Human and Peoples’ Rights (1981), Articles 4, 5 and 19.

14 Article 4.

15 Article 5.

16 Article 19.

3.1. Constitutional Protection in Nigeria

In Nigeria, the right to life is enshrined under section 33(1) of the Constitution of the Federal Republic of Nigeria 1999, which provides that every person has a right to life and shall not be intentionally deprived of it except in circumstances permitted by law.¹⁷ The phrase “every person” is significant because it extends protection beyond citizens to include foreigners, migrants, and other non-nationals within Nigerian territory.

The Nigerian courts have consistently affirmed the fundamental nature of the right to life. In *Ransome-Kuti v Attorney-General of the Federation* 18, the court emphasised that fundamental rights occupy a superior position within the legal hierarchy and must be jealously protected. Although the case did not deal directly with xenophobia, its pronouncements underscore the inviolability of constitutionally guaranteed rights, including the right to life. Similarly, in *Uzoukwu v Ezeonu II*¹⁸ the Court of Appeal reiterated that fundamental rights are enforceable against both state and, in certain circumstances, non-state actors. This is particularly relevant in the context of xenophobic violence, where private individuals are often the direct perpetrators, but the state may still bear responsibility for failing to prevent or respond adequately. Beyond the right to life, section 34 of the Constitution guarantees the right to dignity of the human person, prohibiting torture, inhuman, or degrading treatment.¹⁹ Xenophobic attacks, which often involve brutal violence and dehumanising conduct, clearly fall within the scope of these prohibitions.

3.2 Regional Protection: African Human Rights System

At the regional level, the African human rights system provides robust protection for the sanctity of life. As of July 2026, fifty-four (54) African Union Member States have ratified the African Charter on Human and Peoples' Rights. However, neither the African Union nor the United Nations maintains a centralised, publicly available database identifying which State Parties have enacted domestic legislation incorporating the Charter into their municipal legal systems; consequently, domestication must be verified on a state-by-state basis. As aforementioned in the preceding part of this work, the African Charter on Human and Peoples' Rights guarantees the right to life and dignity under Articles 4 and 5, respectively.²⁰

17 [1985] 2 NWLR (Pt 6) 211.

18 [1991] 6 NWLR (Pt 200) 708.

19 Constitution of the Federal Republic of Nigeria 1999 (as amended), s 34.

20 Art 4 states thus: 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. Similarly, article 5 clearly states as follows “Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

The failure of many African states to fully domesticate the African Charter on Human and Peoples' Rights into their national legal systems has significant implications for the protection of human rights and the fight against xenophobia. Domestication naturally integrates international or regional treaties into domestic law, making them enforceable by national courts and institutions. Where the Charter is not adequately domesticated, its provisions guaranteeing equality, non-discrimination, freedom of movement, human dignity, and protection from arbitrary treatment often remain ineffective in practice. As a result, migrants, refugees, and foreign nationals may have limited legal remedies when they face discrimination, violence, or exclusion. This weakens the rule of law and undermines the Charter's objective of promoting unity, solidarity, and respect for human rights among African peoples.

The likely outcome of this failure is the persistence and escalation of xenophobia in many African countries. Without strong domestic legislation reflecting the Charter's principles, governments may struggle to prevent or effectively punish xenophobic acts. Negative stereotypes, economic competition, political manipulation, and social tensions can flourish unchecked, leading to hostility against non-nationals. Xenophobic attacks may result in loss of lives, destruction of property, displacement of communities, and strained diplomatic relations between African states. Furthermore, the absence of enforceable legal protections can discourage regional integration efforts and hinder the realisation of continental initiatives such as the African Union's vision of a united and integrated Africa. Ultimately, the non-domestication of the Charter weakens human rights protection mechanisms and creates conditions in which xenophobia can thrive, thereby threatening peace, social cohesion, and sustainable development across the continent.

Conversely, the domestication of the Charter gives it the force of law, allowing individuals to rely on its provisions in domestic courts. The African Commission on Human and Peoples' Rights has interpreted the right to life broadly, holding that States have not only a negative obligation to refrain from arbitrary deprivation of life but also positive obligations to take appropriate measures to protect individuals against reasonably foreseeable threats to their lives.²¹ This includes protection against violence perpetrated by private individuals, thereby reinforcing state responsibility in cases of xenophobic attacks.

21 African Commission on Human and Peoples' Rights, *General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4)*, adopted on 18 November 2015 <https://achpr.au.int/en/node/851> accessed 28 July 2026.

2.3 International Legal Frameworks

At the international level, several instruments reinforce the protection of life and prohibit discrimination against non-nationals. It is important to note that not all of the instruments are legally binding. The Universal Declaration of Human Rights (UDHR) provides in Article 3 that everyone has the right to life, liberty, and security of person. Similarly, the International Covenant on Civil and Political Rights (ICCPR) guarantees the inherent right to life under Article 6, describing it as a right that shall be protected by law. These provisions are complemented by anti-discrimination norms, particularly those prohibiting distinctions based on nationality or origin. Xenophobic violence, by its very nature, constitutes a violation of these norms, as it targets individuals solely on the basis of their foreign identity.

Importantly, international human rights law imposes a due diligence obligation on states. This requires states to take reasonable measures to prevent, investigate, and punish acts that threaten the right to life. Failure to do so may result in international responsibility, even where the immediate perpetrators are private actors.

At the sub-regional level, the Southern African Development Community (SADC) has adopted several legal and policy instruments that contribute to addressing the underlying causes of xenophobia, although it has not adopted a standalone regional framework specifically dedicated to combating xenophobic violence. The SADC Protocol on Facilitation of Movement of Persons, signed in 2005, seeks to promote the gradual removal of barriers to the lawful movement of persons within the region, encourage cooperation among Member States on migration governance, and harmonise immigration policies. Similarly, the SADC Regional Migration Policy Framework, launched in 2020, encourages Member States to adopt coordinated migration policies that promote safe, orderly and regular migration while strengthening the protection of migrants' rights and reducing the social tensions often associated with irregular migration. These regional instruments recognise that improved migration governance and regional cooperation are essential to fostering social cohesion and reducing discrimination against migrants.²²

In addition, SADC has consistently emphasised the protection of refugees, asylum seekers and migrants through regional cooperation. The SADC Declaration on Refugee Protection acknowledges that xenophobia and intolerance undermine regional integration and calls upon Member States to cooperate in protecting displaced persons in accordance with international and regional human rights standards. Consequently, SADC's interventions against xenophobia have focused on promoting coordinated migration governance, harmonisation of

²² Southern African Development Community (SADC), *Protocol on Facilitation of Movement of Persons*, signed on 18 August 2005 <https://www.sadc.int/pt-pt/node/2994> accessed 28 July 2026.

national laws, and cooperation among Member States, in addition to establishing binding mechanisms specifically directed at preventing or prosecuting xenophobic violence.²³

3.4 Gaps in Enforcement and Practical Challenges

Despite the existence of constitutional, regional and international legal frameworks protecting the right to life and prohibiting discrimination, significant challenges remain in the effective enforcement of these protections against xenophobic violence. Reports by the African Commission on Human and Peoples' Rights, Amnesty International and Human Rights Watch indicate that weaknesses in law enforcement, inadequate policing, and inconsistent implementation of existing laws have often limited the effectiveness of state responses to xenophobic attacks. Consequently, a substantial gap persists between the legal obligations assumed by States and the practical protection afforded to migrants and other non-nationals.²⁴

Another challenge is the inadequate investigation and prosecution of perpetrators of xenophobic violence. Human rights bodies have observed that delays in criminal investigations, insufficient evidence gathering, and low prosecution rates often result in impunity, thereby weakening public confidence in the criminal justice system and diminishing the deterrent effect of the law. Effective accountability is, therefore, essential to ensuring compliance with States' obligations under the African Charter on Human and Peoples' Rights and international human rights law to protect the right to life and provide effective remedies for victims.²⁵

Institutional weaknesses and poor coordination among law enforcement agencies, immigration authorities and prosecutorial bodies further impede effective responses to xenophobic violence. These challenges are compounded by the reluctance of many migrants, particularly undocumented migrants, to report crimes due to fears of arrest, detention or deportation. The United Nations Special Rapporteur on the Human Rights of Migrants has noted that such fears often prevent victims from accessing justice and undermine efforts to combat xenophobia and related human rights violations.²⁶

23Southern African Development Community (SADC), *Declaration on Refugee Protection* (1998) <https://www.sadc.int>. See also African LII version: <https://africanlii.org/en/akn/aa-sadc/act/declaration/1998/refugee-protection/eng%401998-01-01> accessed 28 July 2026.

24 African Commission on Human and Peoples' Rights, *Resolution 131 on the Situation of Migrants in Africa* (2008) <https://achpr.au.int/en/adopted-resolutions/131-resolution-situation-migrants-africa> accessed 28 July 2026.

25 Human Rights Watch, *They Have Robbed Me of My Life: Xenophobic Violence Against Non-Nationals in South Africa*, 2020, available at: <https://www.hrw.org> (accessed 28 July 2026); Amnesty International, *South Africa: Authorities Must End Cycle of Xenophobic Violence* (2019) <https://www.amnesty.org> accessed 28 July 2026.

26 United Nations Human Rights Council, *Report of the Special Rapporteur on the Human Rights of Migrants* UNDocA/HRC/26/35 (3April 2014) <https://documents.un.org/doc/undoc/gen/g14/128/74/pdf/g1412874.pdf> accessed 28 July 2026.

These shortcomings suggest that legal protections alone are insufficient to safeguard the right to life. Effective implementation requires adequately resourced institutions, impartial law enforcement, prompt investigation and prosecution of offenders, and accessible remedies for victims. Strengthening institutional capacity and ensuring accountability are therefore essential to translating legal guarantees into meaningful protection against xenophobic violence.

4. MORAL AND PHILOSOPHICAL PERSPECTIVES

Beyond legal prohibitions, xenophobic violence raises profound moral questions about the value of human life and the ethical obligations owed to “the other.” While law provides mechanisms for accountability, moral philosophy supplies the underlying justification for why such protections exist in the first place.

4.1 The Sanctity of Life as a Moral Principle

The sanctity of life is a foundational principle in moral and political philosophy, asserting that human life possesses inherent worth that must not be arbitrarily violated. In legal theory, this principle is reflected in recognising life as a precondition for enjoying all other rights. Without life, rights such as liberty, dignity, and security lose their meaning. From a moral standpoint, the sanctity of life is closely tied to the concept of *intrinsic human worth*, which holds that every person is valuable simply by virtue of being human, not because of nationality, economic status, or social belonging. Xenophobic violence directly contradicts this principle by reducing individuals to their foreign identity and treating that identity as justification for harm.²⁷

Consequently, this reflects a failure of *universal moral recognition*—the idea that moral obligations extend beyond citizens or nationals to all human beings²⁸. When individuals are targeted and killed based on nationality, the moral boundary of humanity is fractured, and life becomes conditional rather than absolute.

4.2 Human Dignity and Universality

Human dignity is central to both moral philosophy and modern human rights law. It serves as the ethical foundation for the right to life and prohibits treating individuals as mere means to an end. Xenophobic violence, which often involves dehumanization, looting, and collective punishment, represents a direct assault on this dignity. The ethical theory of universality holds that moral rules must apply equally to all persons without exception. This

27 United States Conference of Catholic Bishops (USCCB), *Life and Dignity of the Human Person* (n.d.) https://usccb_lifeanddignityofthehumanperson/ USCCB – Life and Dignity of the Human Person accessed 25 June 2026.

28 Ibid.

principle is reflected in global human rights discourse and is embedded in instruments such as the Universal Declaration of Human Rights.²⁹ However, xenophobic attitudes reveal a tension between universal moral claims and localized social prejudices. In practice, victims of xenophobic violence are often portrayed as outsiders who are less deserving of protection or empathy. This moral exclusion creates a hierarchy of human worth that is incompatible with both ethical universality and legal equality.

4.3 Normalisation of Violence and Ethical Failure

One of the most troubling aspects of xenophobic violence is its gradual normalization within certain communities. When repeated acts of violence against foreigners are met with inadequate condemnation or weak enforcement, they risk becoming socially tolerated. From an ethical perspective, this reflects a breakdown in what moral philosophers describe as *collective conscience*—the shared sense of right and wrong that binds societies together. Once this conscience is weakened, violence against marginalized groups can be rationalized or ignored.³⁰ The combination of both political and economic frustration often contributes to this moral erosion. When leaders or influential figures frame foreign nationals as burdens or threats, they inadvertently legitimize hostility. Over time, this shifts xenophobic sentiment from private prejudice to public justification, lowering the moral threshold for violence.

4.4 Moral Responsibility beyond the Perpetrator

A significant insight from moral philosophy is that responsibility for harm does not rest solely with the direct perpetrator. Instead, it extends to all actors who contribute to the conditions that make such harm possible³¹. In the context of xenophobic violence, this includes, but is not limited to:

- a. Political leaders who use exclusionary rhetoric.
- b. Institutions that fail to enforce the law effectively.
- c. Communities that remain silent in the face of violence.
- d. Media narratives that reinforce stereotypes about foreigners.

This broader conception of responsibility aligns with the idea of collective moral accountability, which recognizes that social harms are often produced by systemic conditions rather than isolated acts. Thus, while legal systems may punish individual offenders, moral responsibility demands a wider reckoning with the societal structures that enable xenophobic

²⁹ Universal Declaration of Human Rights (1948), Article 3.

³⁰Émile Durkheim, *The Division of Labour in Society* (translated by WD Halls, Macmillan, London, 1984) (originally published 1893) https://thedivisionoflabourinsociety_society accessed 25 June 2026.

³¹ Iris Marion Young, *Responsibility for Justice* (Oxford University Press 2011) https://responsibilityforjustice_justice accessed 25 June 2026.

violence. In this sense, xenophobic violence is not merely a breakdown of law and order but a failure of moral imagination—the inability to recognize the humanity of those perceived as different. Addressing this failure requires more than legal reform; it requires a transformation in social attitudes, ethical education, and civic responsibility. This is contained in the Universal Declaration of Human Rights; the combined effect of the provisions here is that the sanctity of life imposes a positive moral duty on both states and individuals: not only to refrain from taking life unjustly, but to actively protect it: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."³² Furthermore, Article 3 stipulates, thus: "Everyone has the right to life, liberty and security of person."³³ This duty is especially significant in plural societies where diversity is a reality.

5. RESPONSIBILITY FOR XENOPHOBIC VIOLENCE

A central issue in the discourse on xenophobic violence is the question of responsibility—specifically, who bears legal and moral accountability when the sanctity of life is violated in such contexts. Responsibility can be examined at three levels: individual, state, and collective/societal.

5.1 Individual Criminal Responsibility

At the most immediate level, individuals who participate in xenophobic attacks bear direct criminal responsibility under domestic criminal law. Acts such as murder, assault, arson, and looting are punishable offences under most legal systems, including Nigeria and South Africa. In Nigerian law, for instance, unlawful killing constitutes the offence of murder under the Criminal Code where intent to cause death or grievous harm is established.³⁴ Similarly, South African criminal law criminalizes unlawful deprivation of life under common law principles of murder and culpable homicide.³⁵

This raises concerns about the effectiveness of domestic criminal justice systems in addressing mass violence. Even though international criminal law does not specifically

32 Universal Declaration of Human Rights (1948), art 1.

33 Universal Declaration of Human Rights (1948), art 3.

34 Sections 316 (a) and 316 (b) Criminal Code Act, Chapter C38, Laws of the Federation of Nigeria (LFN) 2004

35 In South African law, there is no specific statutory section that codifies the definitions of murder and culpable homicide. Instead, the unlawful deprivation of life is criminalized under common law, deeply rooted in Roman-Dutch law principles. Under South African common law, the definitions and elements of these offenses are established through judicial precedent rather than a specific statutory enactment. The Criminal Law Amendment Act 105 of 1997, Section 51(1) mandates life imprisonment for planned or premeditated murder. While the Criminal Procedure Act 51 of 1977 Section 51 (and Schedule 2, Part I) designates murder and certain forms of culpable homicide as severe, scheduled offenses that fall under the jurisdiction of the Regional Courts and High Courts. The death penalty which was formerly authorized under Section 277 of the CPA was declared unconstitutional by the Constitutional Court in the landmark case of *S v Makwanyane and Another* 1995 (3) SA 391 (CC).

recognise xenophobia as a separate international crime capable of attracting individual criminal responsibility, criminal liability arises where xenophobic conduct constitutes one of the offences codified in the Rome Statute of the International Criminal Court. Article 7 of the Rome Statute provides that acts such as murder, extermination, deportation or forcible transfer of population, imprisonment, persecution, and other inhumane acts amount to crimes against humanity when committed as part of a widespread or systematic attack directed against a civilian population, with knowledge of the attack. Of particular relevance is Article 7(1)(h), which criminalises persecution against an identifiable group or collectivity on political, racial, national, ethnic, cultural, religious or other universally recognised discriminatory grounds. Accordingly, where xenophobic attacks against foreign nationals are widespread or systematic and are motivated by discriminatory intent, individual perpetrators, organisers or those exercising command responsibility may incur criminal liability before the International Criminal Court or competent domestic courts exercising international criminal jurisdiction³⁶.

The Rome Statute further establishes that criminal responsibility is individual, not collective. Article 25 provides that any person who commits, orders, solicits, induces, aids, abets or otherwise contributes to the commission of crimes within the Court's jurisdiction is individually criminally responsible. Although xenophobia is not expressly listed as an international crime, acts of xenophobic violence may therefore constitute crimes against humanity where the legal threshold under Article 7 is satisfied.

5.2 State Responsibility and Due Diligence Obligations

Beyond individual liability, states bear a positive obligation under international human rights law to protect individuals within their jurisdiction from foreseeable harm, including harm inflicted by private actors. This principle of due diligence has been consistently affirmed in international jurisprudence. The Human Rights Committee has interpreted Article 6 of the International Covenant on Civil and Political Rights (ICCPR) as imposing an obligation on states not only to refrain from arbitrary deprivation of life but also to take appropriate measures to protect life where threats are foreseeable.³⁷ Similarly, in *Osman v United Kingdom*, the European Court of Human Rights held that state liability may arise where authorities knew or ought to have known of a real and immediate risk to life and failed to take reasonable measures

³⁶Rome Statute of the International Criminal Court, adopted on 17 July 1998, entered into force on 1 July 2002, Articles 7, 25 and 28 <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf> accessed 28 July 2026.

³⁷United Nations Human Rights Committee, *General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life* (CCPR/C/GC/36), Geneva, 2018; United Nations, *International Covenant on Civil and Political Rights*, 1966, Art. 6(1); United Nations Human Rights Committee, *General Comment No. 36* (2018), paras. 7, 18, and 21–23.

to prevent it.³⁸ Although a non-African authority, the principle has persuasive value in interpreting state obligations under the right to life. Other African systems emphasise that states must exercise due diligence to prevent, investigate, prosecute, and punish acts that violate human rights, including those committed by private individuals.³⁹ Failure to do so may amount to a breach of the African Charter on Human and Peoples' Rights⁴⁰. In the context of xenophobic violence in South Africa, repeated outbreaks of attacks raise serious questions as to whether state authorities have discharged this due diligence obligation effectively.

5.3 Collective and Societal Responsibility

In addition to legal responsibility, xenophobic violence also implicates broader collective responsibility. This includes the role of social structures, political discourse, and institutional culture in either enabling or discouraging violence. Political leaders, for example, carry heightened responsibility because of their influence on public perception. Where political rhetoric frames migrants as scapegoats for economic hardship, it can indirectly legitimize hostility.⁴¹ This phenomenon has been widely discussed in migration scholarship⁴², which links elite discourse to the normalization of xenophobic attitudes. This relationship has been documented in migration and political discourse scholarship, which further demonstrates that elite narratives portraying migrants as economic, social, or security threats contribute to the normalization of xenophobic attitudes and, in some instances, create conditions conducive to violence.

Generally speaking, the media institutions also play a significant role. Sensationalist reporting or repeated association of migrants with crime can reinforce stereotypes, contributing to what scholars describe as the “othering” of foreign nationals. Closely linked to xenophobic violence is the erosion of trust in the rule of law. When victims perceive that state institutions are unable or unwilling to protect them, they become further marginalized. The rule of law requires not only the existence of laws but also their consistent and impartial enforcement. In this regard, xenophobic violence exposes structural weaknesses in governance systems across

38 (1998) 29 EHRR 245; [1998] ECHR

39 *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR 2006) para 147; *African Commission on Human and Peoples' Rights*, General Comment No 4 on Article 5 of the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (2017) para 73.

40 African Charter on Human and Peoples' Rights (1981), arts 4, 5 and 19.

41 International Covenant on Civil and Political Rights (1966), art 6

42 Teun A van Dijk, *Elite Discourse and Racism* (Sage Publications 1993); Ruth Wodak, *The Politics of Fear: What Right-Wing Populist Discourses Mean* (2nd edn, Sage Publications 2021); Loren B Landau (ed), *Exorcising the Demons Within: Xenophobia, Violence and Statecraft in Contemporary South Africa* (Wits University Press 2011); Jonathan Crush (ed), *The Perfect Storm: The Realities of Xenophobia in Contemporary South Africa* (Southern African Migration Programme 2008).

several African states, particularly in relation to policing capacity, judicial efficiency, and political accountability.

6. IMPLICATIONS FOR HUMAN RIGHTS AND SOCIAL ORDER

Xenophobic violence has far-reaching implications that extend beyond isolated incidents of brutality. It strikes at the core of human rights protection, undermines social cohesion, and weakens the legitimacy of legal and political institutions. At its core, xenophobic violence constitutes a direct violation of the right to life, dignity, and security of the person. These rights are guaranteed under both domestic and international legal frameworks, largely derived from Articles 4 and 5 of the African Charter on Human and Peoples' Rights. When such violence occurs repeatedly, it signals not merely individual criminality but a systemic failure of rights protection. Victims are not only deprived of life and property but are also denied equal protection of the law. This creates a hierarchy of human worth, contrary to the foundational principle of equality before the law. The implication is particularly severe in jurisdictions where enforcement mechanisms are weak or inconsistent, as the law becomes symbolic rather than protective in practice.

Similarly, xenophobic violence also undermines social cohesion, which is essential for peaceful coexistence in plural societies. In countries such as South Africa, where migration from across the continent is significant, recurrent attacks on foreign nationals have deepened mistrust between communities. This breakdown in trust leads to segregation, retaliatory tensions, and long-term resentment between citizens and migrants. Over time, this can escalate into cycles of violence, making reconciliation more difficult and governance more fragile. From a constitutional perspective, such instability threatens the state's ability to fulfil its core responsibility of maintaining peace, order, and security.

At the regional level, xenophobic violence poses a serious challenge to African integration efforts. Instruments such as the African Union's Agenda 2063 envision a continent with free movement of persons and enhanced cooperation among states. However, persistent hostility toward migrants undermines these objectives. In practical terms, xenophobic violence discourages intra-African migration, disrupts labour mobility, and weakens economic integration. Migrants often play essential roles in host economies, particularly in informal trade and service sectors. Violence against them has negative economic consequences that extend beyond the immediate victims. Furthermore, such incidents strain diplomatic relations between states, as home countries of victims often demand accountability and protection for their citizens abroad.

The scholarship on xenophobia has demonstrated that the phenomenon sometimes extends beyond individual prejudices to encompass broader political, socio-economic and

institutional processes. Early studies on post-apartheid South Africa observed that hostility towards foreign nationals emerged despite the country's constitutional commitment to equality and human rights. This posits the argument that xenophobia is deeply embedded in public attitudes and state practices, with migrants frequently portrayed as threats to employment, security and social welfare.⁴³ These perceptions are reinforced through restrictive immigration policies and public discourse that construct non-citizens as outsiders who are undeserving of legal protection. Similarly, there is the notion that xenophobic violence cannot be understood merely as spontaneous criminality; rather, it reflects historical patterns of statecraft, exclusion and contested citizenship that shape how belonging and national identity are constructed in contemporary South Africa.⁴⁴ These positions collectively demonstrate that xenophobia is somewhat sustained by structural and institutional conditions rather than isolated acts of intolerance.

Recent scholarship has expanded the analysis by demonstrating that xenophobia is produced through the interaction of political rhetoric, structural inequality and exclusionary governance. Xenophobic violence is not simply the consequence of individual prejudice but is generated by structural forces, including neoliberal economic policies, exclusionary state institutions and negative media representations of migrants.⁴⁵ Likewise, the repeated attacks on migrants are facilitated by local governance failures, weak law enforcement and social practices that normalise the exclusion of foreign nationals from communities.⁴⁶ Collectively, these authors seem to shift scholarly attention from individual perpetrators to the broader political and institutional environments that create opportunities for xenophobic violence.

International organisations and human rights bodies have similarly recognised xenophobia as a multidimensional human rights challenge requiring coordinated legal and policy responses. The International Organization for Migration (IOM) has consistently reported that misinformation, inflammatory political rhetoric and inadequate migration governance contribute significantly to discrimination and violence against migrants.⁴⁷ Likewise, the United Nations Special Rapporteur on Contemporary Forms of Racism has warned that political narratives portraying migrants as security or economic threats fuel

43 Jonathan Crush, 'The Dark Side of Democracy: Migration, Xenophobia and Human Rights in South Africa' *International Migration* (2000) 38 (6) 103–133.

44 Loren B Landau (ed), *Exorcising the Demons Within: Xenophobia, Violence and Statecraft in Contemporary South Africa* (Wits University Press 2011).

45 Amanuel Isak Tewolde, 'Structural Forces Shape Xenophobia in South Africa: Looking Beyond the Human Agent' *International Social Science Journal* (2023) (73) 599–615.

46 Jean Pierre Misago and Loren B Landau, 'Running Them Out of Time: Xenophobia, Violence, and Co-authoring Spatiotemporal Exclusion in South Africa' *Geopolitics* (2022) 28 (5) 1611–1635.

47 International Organization for Migration, *World Migration Report 2024* (International Organization for Migration 2024) <https://publications.iom.int/books/world-migration-report-2024> accessed 29th July 2026.

xenophobia and increase the likelihood of hate crimes and discriminatory practices.⁴⁸ Within South Africa, the Consortium for Refugees and Migrants in South Africa (CORMSA) has documented recurring patterns of violence against foreign nationals, identifying failures in policing, accountability and community integration as factors that perpetuate xenophobic attacks.⁴⁹ These reports reinforce academic findings that effective responses to xenophobia require not only criminal accountability but also institutional reform, responsible political leadership and sustained public education aimed at dismantling discriminatory narratives.

7. RECOMMENDATIONS AND CONCLUSION

7.1 Recommendations

The following multi-layered response, involving legal, institutional, and socio-ethical interventions, is hereby recommended.

a. Strengthening Legal Enforcement Mechanisms

Although existing legal frameworks in jurisdictions such as Nigeria and South Africa provide robust protections for the right to life, enforcement remains a critical weakness. There is therefore a need to ensure prompt investigation and prosecution of offenders to eliminate impunity and also establish specialised hate crime units within policing structures to address targeted violence against foreign nationals

b. Judicial Activism and Human Rights Adjudication

Courts play a crucial role in reinforcing the sanctity of life. Judicial interpretation should adopt a purposive and rights-based approach, particularly in cases involving state inaction. Domestic courts should be more willing to hold states accountable for failing to prevent foreseeable violence, recognise positive obligations under constitutional and human rights provisions, and apply regional instruments such as the African Charter as enforceable standards.

c. Political Accountability and Responsible Governance

Political leadership plays a decisive role in either curbing or exacerbating xenophobic tensions. Governments must avoid rhetoric that indirectly scapegoats foreign nationals for economic or social challenges. Instead, states should promote inclusive governance frameworks, ensure equal protection of all persons regardless of nationality and publicly condemn xenophobic violence promptly and consistently.

48 United Nations Human Rights Council, *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance* UN Doc A/HRC/38/52 (25 April 2018).

49 Consortium for Refugees and Migrants in South Africa, *Protecting Refugees, Asylum Seekers and Immigrants in South Africa* (CORMSA 2024).

d. Regional Cooperation and Migration Governance

At the regional level, African states must strengthen cooperation mechanisms under the African Union framework to manage migration and prevent conflict. This includes, but is not limited to, harmonising migration policies, strengthening early warning systems for violence against migrants and enhancing diplomatic protection for citizens abroad.

7.1 Conclusion

Xenophobic violence represents a profound challenge to both legal order and moral consciousness in contemporary societies. By targeting individuals on the basis of nationality, it directly undermines the sanctity of life, a principle that lies at the heart of constitutional and human rights law. This article has shown that while robust legal frameworks exist at domestic, regional, and international levels, weak enforcement, institutional failures, and broader socio-political conditions undermine their effectiveness. The situation in South Africa, alongside related experiences in other African states, illustrates the gap between normative protections and lived realities.

It has further been shown that xenophobic violence is not merely a legal issue but also a moral one. It reflects a breakdown in ethical responsibility, collective conscience, and respect for human dignity. Accordingly, addressing it requires more than legal prohibition; it demands a reinvigoration of moral values, responsible governance, and effective institutional response. Ultimately, safeguarding the sanctity of life requires a holistic approach that integrates law, morality, and policy. Only through such an approach can societies move toward genuine protection of human life and the elimination of violence based on identity.