

Statement by the Southern Africa Litigation Centre (SALC) to the African Commission Regarding the Xenophobic Attacks in South Africa

Your Excellency Representative of the Government of the Gambia, Your Excellency Representative of the African Union, Your Excellency Chairperson of the African Commission on Human and Peoples' Rights, Dear Commissioners members of the African Commission on Human and Peoples' Rights, Your Excellencies Diplomats accredited to the Gambia, State delegates and Participants, Invited guests,

Dear Colleagues,

Thanks you for the privilege and honour to be afforded this opportunity to address you at this 56th Ordinary Session on behalf of the Southern Africa Litigation Centre. We extend our most sincere gratitude to the authorities and the people of the Republic of the Gambian for their warm welcome and hospitality.

The Southern Africa Litigation Centre (SALC) and a number of other civil society organizations, come before you as concerned organizations and citizens of the African continent to raise concern about the xenophobic attacks currently occurring, mainly against African non-nationals, in Republic of South Africa. We come to you, as the body responsible for the promotion and protection of human rights in the African continent, requesting you to call upon the South African government to take concrete steps to end these attacks, prosecute perpetrators and protect non-nationals living in their territory from violations of their human rights, including the right to life.

As civil society organisations based in and working on human rights issues in the African continent, we are particularly concerned about the loss of lives, injuries to persons and damage to private property and the dignity of non-nationals living in South Africa, which are a grave violation of their rights protected under the African Charter on Human and Peoples' Rights (the African Charter). The right to life, not to be subjected to torture, cruel, inhuman and degrading treatment, and the right to strict equality before the law are non derogable rights – not dependent on a person's status in a country. The status of non-nationals who are victims of the attacks in South Africa is therefore irrelevant.

We note statements of several governments, including the South African government, to provide assistance for individuals leaving the country. While those who wish to leave should be assisted in leaving, the solution to the violence should not be to repatriate all non-nationals, but to ensure an environment in the country in which their rights are protected. Furthermore, the acts of those carrying out attacks against non-nationals should not be rewarded by assisting them to achieve their objective of ridding South Africa of non-nationals. In this regard, we remind all States of the provisions of Article 12 of the African Charter which prohibits the mass expulsion of non-nationals, including mass expulsion aimed at national groups.

While some statements have been made to condemn violence, we are concerned that not enough concrete steps are being taken to prevent such attacks, prosecute perpetrators, protect non-nationals and prevent the mass coerced exodus of non-nationals from the country.

We, the undersigned organizations, request the African Commission to call upon the government of South Africa to:

- Protect non-nationals from further attacks, including by increasing police presence in high-risk areas and immediately implementing conflict resolution initiatives in these areas involving the Department of Home Affairs.
- Provide urgent humanitarian assistance to internally displaced non-nationals in the country, including counseling for trauma.
- Bring perpetrators of violence against non-nationals to justice. To facilitate such persecutions the Department of Justice should set up special courts, as was done during the 2010 World Cup in South Africa, to deal with all cases of violence against non-nationals in a bid to ease the burden on the courts.

In 2008, the xenophobic attacks left at least 62 dead, hundreds wounded, and contributed to the displacement of 100,000 people or more. Following those attacks the South African Human Rights Commission prepared a report with their findings and recommendations. We call on you to remind the South African government of this report and call upon the government to immediately implement the recommendations found therein.

In addition, we request you to call upon government of other countries to ensure steps are taken to prevent reprisals against South African nationals in their territories. International organizations should also assist with humanitarian assistance for internally displaced non-nationals in South Africa and those returning to their own countries following the attacks.

We thank you for your time.