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## Non-citizens' rights: Xenophobia, nationalism and struggle post-transition

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#### How to cite:

Kerr, Philippa and Dixon, John (2021). Non-citizens' rights: Xenophobia, nationalism and struggle post-transition. In: Elcheroth, Guy and de Mel, Neloufer eds. In the Shadow of Transitional Justice: Cross-national Perspectives on the Transformative Potential of Remembrance. London, UK: Routledge, pp. 91–103.

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Version: Version of Record

Link(s) to article on publisher's website:  
<http://dx.doi.org/doi:10.4324/9781003167280-9>

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# 7 Non-citizens' rights

## Xenophobia, nationalism and struggle post-transition

*Philippa Kerr and John Dixon*

### Introduction

A negative moment is one where new antagonisms emerge while old ones remain unresolved.

(Mbembe 2015)

Transitional justice often involves erstwhile victims of unjust regimes taking over political power from their former persecutors. At the end of apartheid in South Africa, this transition happened in a “negotiated revolution” when members of the banned African National Congress (ANC) began to meet in secret with members of the National Party in the late 1980s. The eventual outcome of these negotiations was the unbanning of the ANC and other political parties in 1990, the release of Nelson Mandela and other political prisoners, the adoption of an interim Constitution, and, eventually, the first democratic elections in 1994, which ushered in an ANC government (Jung and Shapiro 1995).

But, in the years that followed, South Africa had to address the question of how to “deal with the unfinished business of the past” (O’Connell 2018, p. 33). This is perhaps the classic transitional justice question. Most studies of transitional justice practices in South Africa have tended to focus on the work and aftermath of the Truth and Reconciliation Commission (TRC) which operated between 1996 and 1998 (e.g. van Zyl 1999; Mamdani 2002; Gready 2011). The TRC’s mandate was to hear and record the testimonies of people who had been victims of gross human rights violations during apartheid, specifically in the period between 1960 and 1994. Perpetrators of these crimes could also apply to the TRC for amnesty, in exchange for telling the whole truth, in public hearings, of what they had done, and if they could establish that the crimes had been politically motivated.

While the TRC process enabled many ugly truths, especially of the late apartheid years, to come to light, criticisms were levelled at the TRC by victims and their families who believed that the emphasis on truth and amnesty essentially avoided justice (cf. Mamdani 2002). Others have criticized the TRC’s limited ability to address the broader structural violence that black

South Africans who suffered under the old regime continue to suffer in the new dispensation (Gready and Robins 2014; Evans 2016; cf. Madlingozi 2017). Between 1995 and 2014, under the ANC government, unemployment in South Africa rose from 15% to 27% (using a conservative definition of unemployment; a more expansive one puts the figure in the high 30s) (Jonas 2018). This burden of unemployment is borne highly disproportionately by black people. Madlingozi (2017) has argued that South Africa is in a time of “neo-apartheid constitutionalism”, a term which is used intentionally to “call attention to the fact that post-1994 constitutional re-arrangements are transforming society in ways that do not instantiate a fundamental rupture with [apartheid]” (p. 125). Continuing residential racial segregation, a skewed distribution of wealth in favour of white South Africans, coupled with deteriorating health and education systems and systemic corruption in government and state-owned enterprises means that the post-apartheid period has not been a prosperous one for most black communities.

The purpose of this chapter is not to examine the TRC or other specific transitional justice mechanisms in South Africa in detail, nor is it to offer a critique of the lack of transformative justice and substantive socio-economic redress in the TRC’s aftermath – others have already ably done this (e.g. Gready and Robins 2014; Evans 2016; see also Chapters 2 and 5 in this volume). Rather, it is to draw attention to a new form of collective violence that emerged after apartheid – the phenomenon of anti-immigrant violence – and to raise questions about how this violence is legitimated in the democratic human rights era. At around the same time as the TRC was concluding its work and submitting its final report, the first academic studies started to appear on a new form of violence and discrimination against mainly African, and to some extent Asian, immigrants, which they named xenophobia (e.g. Crush 2000; Harris 2002; Vale 2002; for an account of the emergence of this term in the media, see Palmary 2016). In May 2008, xenophobic violence exploded around the country, with attacks on foreign communities beginning in Alexandra township in Johannesburg and spreading rapidly to other cities. This violence left at least 62 deaths in its wake, and displaced up to 100,000 people, many into temporary camps for internally displaced persons (Landau 2011). Perhaps the most infamous image to circulate in the media was of a Mozambican man, Ernesto Nhamuave, burning to death after being set alight by South African attackers. The case for Nhamuave’s murder was closed without identifying any suspects and no one was ever arrested (Tromp 2015), but Nhamuave is not the only foreign national to have been killed by burning (Misago 2016).

These attacks “provided a forceful contrast to the work of reconciliation that had taken place just a decade earlier, work that was central to articulating a human rights framework for post-apartheid South Africa” (Solomon 2019, p. 156). By 2010, there were still very few successful convictions for the 62 alleged murders and hundreds of other crimes committed during May 2008 (South Africa Human Rights Commission, cited in Breen and Nel

2011, p. 41). In 2015, there was another spike in anti-immigrant violence that led to at least ten deaths. It is likely that these attacks were provoked by the Zulu monarch, King Goodwill Zwelithini, who made a notorious speech at a “moral regeneration” event during which he compared immigrants to lice and called on them to “pack their bags and go back where they came from” (Zwelithini 2015). In fact, xenophobic violence is chronic and ongoing, and every year after May 2008 there have been at least as many murders of foreign nationals as there were in that month (Landau 2015; Misago 2016). In general, the government response to xenophobic violence has been weak and denialist, with many politicians claiming that these incidents are “merely crime” and not “xenophobia” (Crush and Ramachandran 2014; Misago 2016). Also, until very recently South Africa lacked specific hate-crime legislation, making it difficult for the police and criminal justice system to identify xenophobic motives (Breen and Nel 2011; Breen et al. 2016).

But 2015 was also a year that saw many black university students calling for decolonization and the end of white privilege in South African universities under the banner of #RhodesMustFall and other related student movements. Black students and academics calling for decolonization – in some cases, supported by white peers and colleagues – argued that universities continued to be colonial in their character and curricula (Heleta 2016); that the state “transformation” programme had evidently failed to undo the anti-black structure not only of universities, but also of the economy and society; and that more radical decolonization was now needed instead (Naidoo 2015; Madlingozi 2017; cf. Mbembe 2015). Black pain, black rage and the unacceptability of black poverty were some of the defining tropes of the decolonization discourse, illustrated powerfully when Chumani Maxwele threw a container of human faeces, collected from bucket toilets in poverty-stricken shanty towns around Cape Town, onto the statue of Cecil John Rhodes at the University of Cape Town (UCT). Rhodes was a British empire builder in 19th-century Southern Africa, a diamond mining magnate and governor of the Cape Colony between 1890 and 1896. UCT is built on land he owned and bequeathed in his will to the public of South Africa. In these and other protests, students expressed anger that not only the statue of Rhodes, in its prominent position at UCT, but numerous other statues and memorials on university campuses also glorified racist white politicians and educators.

### **New antagonisms**

And so it was that in 2015, a year of both calls for decolonization and of anti-immigrant attacks, philosopher and political theorist Achille Mbembe observed that South Africa had entered a “negative moment”, where “new antagonisms emerge while old ones remain unresolved” (2015). Mbembe, who is affiliated with the University of the Witwatersrand in Johannesburg and was involved in negotiations with students during protests there in 2015–

16 (Habib 2018), is himself originally from Cameroon. He went on to elaborate:

Today many want to finally bring white supremacy to its knees. But the same seem to go missing when it comes to publically [*sic*] condemning the extra-judicial executions of fellow Africans on the streets of our cities and in our townships. As Fanon intimated, they see no contradiction between wanting to topple white supremacy and being anti-racist while succumbing to the sirens of isolationism and national-chauvinism.

(Mbembe 2015)

One of the authors of this chapter (Kerr) witnessed this contradiction at UCT while teaching there temporarily in 2016. Students continuing the momentum of the 2015 protests called for free decolonized education and attempted to shut down the university and prevent the completion of the academic year in order to force the institution to capitulate to their demands. These protests featured mass meetings with a well-known speaker and an audience of students and staff. At one such meeting that I attended, an academic who was a supporter of the student movement and an outspoken proponent of decolonization stood up to speak. Although I no longer remember the details of his whole speech, it ended by singling out the foreign African security guards employed by the private security company which the university had, controversially, contracted to protect the university buildings and enable the continuation of the academic programme. Not a single person spoke up or called out in the meeting that this was xenophobia. Almost the whole meeting then left the hall, apparently to go and confront the foreign security guards. It took me some time to fully realize that what had just happened was an example of an incitement to anti-immigrant violence at a public meeting, couched in the language of legitimate struggle which I had by then read and heard so much about in my own studies on xenophobia. No one asked what purpose would be served by attacking the lowliest employees of the security company, rather than, for instance, confronting the university administrators responsible for contracting it.

This chapter is about that “new antagonism” – the phenomenon of anti-immigrant or xenophobic violence – which emerged after apartheid while the “old antagonism” of racial inequality among South African citizens was still unresolved. It presents a conundrum to the transitional justice paradigm: how can we understand new forms of post-transition violence and victimization which are not simply a straightforward continuation of the violence of the old era, but in fact draw on some of the languages and practices of liberation struggle and transitional justice? Indeed, we will argue that the co-occurrence of these two imperatives in contemporary South Africa – the imperative to transform or decolonize institutions of white privilege and the imperative to rid the country of “foreigners” – is not simply incidental. Rather, anti-immigrant discourses draw deeply on ideologies of struggle,

rights, freedom, and even community healing and reconciliation (e.g. Palm-ary 2016; Solomon 2019; Kerr et al. 2019; Monson 2015), while, in the process, taking the nationalist assumption of citizens' entitlements more or less for granted. In the next section, we first discuss Neocosmos's historical account of the roots of xenophobia in the transition to democracy, and then draw on a diverse set of qualitative case studies which have analysed the views of perpetrators and apologists of xenophobic violence, mainly expressed in research interviews and focus groups at a number of locations around South Africa. Thus, the chapter will show how the very discourse of transitional justice can be co-opted to legitimate new forms of violence against people who have little to do with the actual history of apartheid but are accused of undermining South Africans' ongoing efforts to realize the material benefits of liberation in the present.

### **The roots of xenophobic violence**

What are the roots of this anti-immigrant discrimination and violence in democratic South Africa? Some academics, especially those that note its racialized character, have argued that xenophobia is a manifestation of internalized racism (e.g. Tafira 2011). Other commentators – even those who condemn anti-immigrant violence – nevertheless treat it as axiomatic that economic difficulties, state corruption and chronic poverty make people angry and frustrated, and that in some way it is therefore “understandable” that citizens would turn on their immigrant neighbours (e.g. Zulu 2020, p. 26). But Neocosmos (2006, 2008) argues that these reasons are insufficient to explain why this violence is directed at non-citizens and immigrants specifically. Why do poor South Africans blame *immigrants* for their troubles – rather than politicians, or the rich, or corporations, for example? In other words, while xenophobia can and does have racial, ethnic and class overtones (Chauke 2020), the specifically *nationalistic* element of anti-immigrant violence is often treated as invisible, with commentators falling back more easily onto familiar race- and poverty-based explanations. Neocosmos is one of the few scholars who has offered a historical explanation of the roots of xenophobia, an analysis which requires us to consider how *citizens* – not only races and classes – were produced in the transition to democracy. He reminds us that during apartheid the distinction between black people who were citizens of South Africa and those who were not was not as strong as it is today. Full citizenship of South Africa was for whites only, and the white apartheid state tried to “denationalize” all black people anyway by dividing them on the basis of ethnicity and then making them citizens of the nominally independent homelands. Thus, black people in South Africa were treated much the same as Africans from further afield: as foreign migrants, who should migrate into “white South Africa” only when their labour was needed. In response, the ideology of the ANC and the anti-apartheid movement was more Pan-Africanist and “was very much conceived ... as a fight of all

Africans and their allies against the apartheid state. The concept of ‘nation’ thus developed tended to be inclusive rather than exclusive of Africans from the region” (Neocosmos 2006, pp. 30–1).

So, xenophobia was not an inevitable outcome for the new South Africa. But when the ANC came to power, it chose to treat its population as passive “subjects of state or white largesse”, rather than as active subjects able to contribute to their own development (Neocosmos 2006, p. 77). A distinction therefore needed to be made between those living in South Africa who qualified for state assistance and those who did not. The dividing line for this distinction was South African citizenship. Thus, a new category of denationalized outsiders – those who were citizens of other countries and were not considered as eligible for South African citizenship<sup>1</sup> – was created among those living within South Africa’s borders. And the new South African state simply inherited many of the security ideologies and techniques of the apartheid state, so that once again the movement of people into South Africa was conceptualized as a threat to national security, which justified a powerful military (Vale 2002). So, the transition became “a transition between two different forms of xenophobia, simultaneously with continuity between state practises” (Neocosmos 2006, p. vi).

### **Xenophobia and citizens’ rights**

How do South African citizens themselves articulate anti-immigrant or nationalistic sentiments? Solomon (2019) argues that “[p]art of the reason for the persistence of anti-African migrant sentiment is a prevailing rhetoric of victimization, which frames irregular African migrants as a threat to the rights of South Africa’s poor” (p. 156). Solomon conducted a number of interviews with residents in areas where violence took place in 2008, including in Alexandra township in Johannesburg where some of the earliest attacks in that spate occurred. He reports:

In asking about the scope of the human rights that should be offered to African migrants in the Alex focus groups, I was declaratively told that ‘there are no rights for foreigners’ in South Africa, that this ‘was not their space,’ and that ‘only South Africans must have rights’ in their country.

(p. 164)

Moreover, Solomon argues, many South Africans see “foreigners” as taking opportunities that should rightfully belong to citizens (economic opportunities, government housing, etc.), and are thus “effectively stealing a portion of locals’ freedom” (p. 162). He concludes that “these comments show how easy it is to seek to protect the rights of marginalized citizens by stripping even further marginalized noncitizens of their basic rights” (p. 164).

Solomon (2019) grapples with how hard it is to challenge the spurious connection between the erosion of citizens' rights and the presence of migrants. This is because

Black South Africans have experienced generations of being deprived of rights in their own country, they fought and struggled for decades to gain access to those rights, and now their continued marginalization has left them feeling like that struggle has been in vain. Even worse, outsiders seem to be succeeding in ways that locals have not. In sum, they feel displaced in their own country, which has left some to wonder whether it was a bad decision to open up immigration to the rest of the continent.

(pp. 162–3)

However, there are alternatives: as few other organizations of economically poor South Africans have done, the shack dwellers' movement Abahlali baseMjondolo has argued that migrants are not the cause of South Africans' poverty and that removing them, depriving them of rights or taking other similar drastic measures does not bring about its end. Moreover, the shack dwellers' movement practises an alternative politics of solidarity which emphasizes the *de facto* shared rightlessness of both migrants and citizens who are black, poor, landless and treated as illegal in various ways by the state (Solomon 2019; Abahlali baseMjondolo 2015).

### **Xenophobia and transitional justice language**

Palmary (2016) examines the discourse of members of South African business owners' associations who organized attacks on immigrant communities in Johannesburg in 2011 and 2015 – in particular those immigrants running small businesses which competed with those owned by South Africans. Palmary notes the deep irony in the way that “the political transition that South Africa has undergone is used as a justification for excluding foreigners in the name of realizing freedom” (p. 79). Once again, business association members invoked the language of rights and of democratic transition to argue for why foreign communities should be made to leave the country. For example, some members of the Greater Gauteng Business Forum (GGBF) said:

We are not saying people mustn't have their freedom but we are talking illegal migrants, we are talking about people who are not even allowed to have that freedom of movement. The migration department [*sic*] once told them that to say your rights are very limited despite that South Africa has got freedom, that freedom is not yours, it is a South African freedom (GGBF representative, 2011, interview).

(Palmary 2016, p. 96)



[W]e had to battle for so many years against Apartheid. Now we defeated that part and now we are in the process of rebuilding the country to trust each other, to get to know each other, to tolerate each other, to live with each other, to get to trust each other ... So ... we want us to heal and without any disturbances from them (GGBF representative, 2011).

(pp. 96–7)

In these formulations, it is the very language and concepts of transitional justice that are being deployed to justify anti-immigrant violence.

### **Xenophobic violence and labour struggles**

Our own work on xenophobia has focused on one particular commercial fruit farming community in South Africa's Western Cape province (Kerr and Durrheim 2013; Kerr et al. 2017, 2019). In 2009, 18 months after the May 2008 violence, South Africans living in the informal settlements around the small town of De Doorns forcibly evicted a community of Zimbabwean migrant farm workers, accusing them of taking their jobs by working for farmers at less than the minimum wage. The Zimbabweans – who left their homes and moved into a temporary camp for displaced persons where they stayed for up to a year afterwards – denied this allegation, and argued, as did the farmers, that they were preferred as workers simply because they were more reliable and hardworking. In this research, we found that among the South African farm worker community, the language and practices of struggle against exploitation from farm owners was almost indistinguishable from those of xenophobia. Indeed, forcibly expelling the Zimbabwean community was construed as a way of ensuring that farmers would not be able to bypass the more stringent bargaining efforts of South African workers and labour brokers (labour brokers are middle-men who supply farmers with workers, and often come from the same communities as those workers). For many of these residents, the white farming community was deeply implicated in the town's problems, as they occupied a position of power to allocate jobs to some workers and not others. When asked why the Zimbabweans had been evicted, one labour broker we interviewed explained:

I also feel very sorry for the people from Zimbabwe who now have to live there [in the displaced persons' camp], uh, and the reason why it happened, uh, is because they never stood with us ... if we as South Africans have problems here in, in De Doorns, then they never stood with us. So, that's why the community decided, there must be further steps taken.

When asked about what kinds of problems the community had experienced in the past, he replied:

Like I say, we are farm workers here in De Doorns, we all agree whenever prices [wages] need to be raised. Well, true, the state also raises its prices. But ... at the end of the day if we go there, then they won't stand together with us farm workers, when we go to the farms and go talk to the people to hear whether they can't give us a raise.

In this form of victim-blaming, as in many other opinions we heard in De Doorns, justifications for evicting the Zimbabweans were inextricable from claims to be engaged in a struggle with farmers against their exploitative labour practices (Kerr and Durrheim 2013). Other South African workers felt aggrieved that by giving Zimbabweans work these farmers appeared to have no sense of responsibility to their fellow South Africans, with whom they had shared a long and exploitative history; and they also felt aggrieved about having *themselves* been evicted from their homes on farms in a relatively recent process of farmers "externalizing" large parts of their labour force. For example, one man living in the informal settlement of Stoffland remarked: "The white people chased us off the farms so that we are now sitting in squatter camps ... and now they want to put other people from other countries in our place". In this view, the arrival of the Zimbabweans and the farmers' apparent shift of favour to them as a new workforce was just the last straw in a much longer history of exploitative relations between South African workers and farmers in this community. This history was used and invoked in incitements to anti-immigrant violence by workers, labour brokers and local politicians (cf. Misago 2009).

## **Discussion and conclusion**

The examples discussed in this chapter have shown how a new form of nationalistic identity-based discrimination and violence in post-transition South Africa, that of xenophobia, is justified and legitimated using the language of struggle, rights, victimhood and the realization of South Africans' freedom. While some elements of xenophobia draw on discourses, practices and politics of migration which have their roots in the old South Africa, the specific way that nationalism in post-apartheid South Africa has been configured is what makes this form of violence new. While the overt focus of identity politics discourse in South Africa continues to be mainly on race and racism, anti-immigrant violence is ongoing in the meantime, and there is arguably too little focus on constructions and meanings of South African *citizenship* as an identity category that warrants critical analysis. In this way, nationalism has come to be not a forgotten issue, but perhaps an invisible one in post-transition South Africa. The structures of transitional justice are hard-pressed to deal with this new violence, because they are attuned to a previous conflict with a different configuration of (racial) victims and perpetrators. Yet xenophobia shows that perpetrators and victims are not mutually

exclusive categories (Chauke 2020). In this way, questions of race, redress and citizenship in post-apartheid South Africa cannot easily be separated.

Part of the reason for, or perhaps a manifestation of, the pervasiveness of xenophobia in South Africa is that our society lacks a sufficiently compelling or plausible counter-narrative and counter-politics with which to challenge this seemingly axiomatic link between the rights of black South Africans struggling for real liberation and the necessity of removing “foreigners” who undermine that struggle. Xenophobia discourse silences critiques of itself when it legitimates anti-immigrant violence as part of an ongoing struggle, because this sets up a false dichotomy where those proposing an anti-xenophobic politics must also avoid appearing as anti-struggle (Kerr and Durheim 2013; Kerr et al. 2019). Solomon recognizes this when he claims that “*The challenge then is to respond effectively to that rhetoric of victimization and the logic of exclusive rights that underlies it*” (2019, p. 164, emphasis added). Claiming that xenophobia implicates the discourses of struggle and rights is not to say that all forms of struggle are xenophobic. There have been cases of successful anti-xenophobic counter-mobilizations and interventions by communities, as well as principled anti-xenophobic or inclusive struggle (see Sinwell 2011; Kirshner 2012; Abahlali baseMjondolo 2015; Solomon 2019). While these are evidently not widespread enough to prevent anti-immigrant violence from becoming a chronic and entrenched crisis (Landau 2015; Misago 2016), they provide some important examples of what an anti-xenophobic politics looks like in practice. Nevertheless, xenophobia in South Africa shows how the struggles of the poor, including the victims of the legacy of apartheid, can take a toxic or destructive turn when the historic moral legitimacy of these struggles is used to justify further violence against new victimized groups and to silence any critique of this violence. So, a complex dual task now confronts South Africa: of addressing both ongoing racialized inequality among South Africans, and figuring out rhetorical, political and practical alternatives to the construction of (false) mutual exclusivity that is routinely set up between the rights and freedom of citizens and the rights and freedom of migrants.

## Note

- 1 See Neocosmos (2006) for a discussion of how, after 1994, the possibility was negotiated of extending South African citizenship to migrant miners from Lesotho who had spent much of their working lives in South African mines during apartheid.

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