

‘Voices from behind Bars’: Xenophobia and Foreign Nationals Incarcerated in a South African Correctional Centre

Shanta Balgobind Singh

Abstract

At the dawn of democracy in 1994 South Africa has re-integrated itself with the global community and many have embraced the long awaited constitutional freedom despite numerous challenges. Since its integration into the global community, South Africa has witnessed a surge in migration from the sub-continent in search of opportunities which the new democracy has to offer. This surge of foreign nationals within the country was accompanied by many of the ‘social evils’ that confront a new democratic state, one of which was the increase in the incarceration levels within correctional institutions. The recent spate of crimes, allegedly committed by foreign nationals in South Africa, has prompted some South Africans to blame crime in general on immigrants. This article is based on research that aimed to record the voices of foreign nationals at the awaiting trial section of Medium A, Westville Correctional Centre in Durban, South Africa, on their perceptions and responses to crime and criminality in the country. The article takes a cue from national incarceration statistics which reveals that there is a high level of incarcerated foreign nationals within South African Correctional facilities. Data for this article was utilised from personally administered questionnaires and focus group discussions with incarcerated foreign nationals. Information from this research reveals that the reason for xenophobic violence is multifaceted and that foreign nationals believe that they are treated unjustly by the South African criminal justice system. Their experiences provide evidence that foreign nationals experience many

challenges in terms of crime and xenophobia and they actually become victims of the South African criminal justice system.

Keywords: South African Correctional facilities, incarceration, criminal justice system

Introduction

Although 1994 marked a peaceful transition in South Africa from a dictatorial and oppressive society to one of free democracy, in 2008 the world watched in shock as South African citizens attacked foreign nationals in different communities throughout the country. Xenophobia is not a new occurrence in South Africa. Xenophobic violence in South Africa has been increasingly brought under the media spotlight since 1994, yet there is a lack of empirical data that reliably discusses and debates the alleged involvement of foreign nationals, in the rise of the national crime rates. South Africa's crime levels, escalating unemployment and the alleged abuse of social services, are repeatedly blamed on foreigners. Such allegations are difficult to prove but contribute to serious strain between South African citizens, law enforcement agents and foreigners. The rise of xenophobia cannot be isolated from the country's apartheid past of racial and class division and hostility, racist immigration policies, a siege mentality and attitudes of exclusivity and superiority towards the rest of Africa. Equally it cannot be isolated from new migration streams, legal and irregular, to post 1990 South Africa (Crush *et al.* 2008). Post 1994 the number of documented and undocumented foreign migrants from all parts of Africa increased tremendously.

Drawing on annual statistics from the Department of Correctional Services concerning foreign detainees within the South African Correctional facilities, this research article reflects on the extent to which foreign nationals have exposed dangerous levels of xenophobia among many South Africans. The main aim of this article is to record the voices of foreign nationals who are awaiting trial at the Medium A, Westville Correctional Centre in Durban, South Africa, on their perceptions and responses of crime and criminality. It seeks to document the experiences of foreign nationals awaiting trial, in order to add their voices to the debate on crime, migration and xenophobia in South Africa. Their experiences provide evidence that

foreign nationals experience many challenges in terms of crime and xenophobia and they become victims of the South African criminal justice system.

Research Methodology

Research for this article began in 2008 when there were strong xenophobic attacks on foreign nationals in South Africa. This study was conducted at the Awaiting-Trial section of Medium A, Westville Correctional Centre, Durban, South Africa. Data for this article was gathered through three methods: firstly, in April 2008, questionnaires were administered to a sample of a hundred awaiting trial detainees. Secondly, observations and group discussions (groups of approximately twenty-five) were conducted with the detainees in order to record their personal stories and describe their experiences as foreign nationals who have come into contact with the South African criminal justice system. Semi-structured, open-ended questions were used in order to ascertain the various problems experienced these detainees within the correctional centre. Detainees were asked various questions which were thought to be significant to them as foreigners', some of which were: their reasons for coming to South Africa; their length of stay in the country; whether they entered the country legally; alleged crimes that they were incarcerated for; reasons for the commission of offences and against whom were the alleged crimes committed. Thirdly the principle researcher conducted individual interviews with foreign nationals. Interviews, both telephonic and personal were conducted on several occasions with correctional officials after arrangements were made with them. Officials were cooperative and provided the researcher with detailed information concerning the incarceration of foreign nationals within the correctional institution. The data was captured in the form of transcribed taped interviews and extensive field notes. Voluntary participation in the research was communicated to inmates prior to the interviews. Detainees were required to sign a consent form before participation in the research.

The awaiting trial section, Medium A of Westville Prison was constructed in 1986, at the time of the establishment of the penal institution, and is the biggest awaiting trial centre in KwaZulu-Natal. Medium A has 21 units of which C 1-6 housed awaiting trial foreign national detainees. These units were designed to accommodate approximately 25 people but

accommodated 70-80 (300% overcrowded). This research was administered within in the courtyard of C1-6, an area that housed only foreign nationals who were awaiting trial. At the time of the research, (April 2008), there were approximately 400 awaiting trial foreign detainees in the correctional centre. The total number of awaiting trial inmates at the Westville Prison, of all nationalities was approximately 4000.

Foreign nationals awaiting trial at the Westville Correctional centre were informed about the study by correctional officials and the researcher. One hundred questionnaires were administered to foreign national detainees but only forty-seven questionnaires were returned.

Analysis of the biographical data revealed that five detainees were between the ages 18 to 20 years, 19 between the ages of 21-25 years, 13 between 26-30 years, 9 between 31-35 years and 1 was over 36 years. All were Black African male detainees. Twenty one were from Mozambique, 8 from Tanzania, 5 from Zimbabwe, 4 from Nigeria, 3 from the DRC, 2 from Burundi and 1 each from Malawi, Zanzibar, Cameroon and Kenya. Interestingly enough, 4 had South African citizenship yet they were incarcerated as foreign nationals because of their country of birth. Although the first language of only one detainee was English, most of them spoke the language fluently.

Fifty-two were single, 15 married, 11 widowed and 6 divorced. Six had primary school education, 24 high school education, 5 tertiary education, 9 an unknown foreign qualification and 3 no education at all. Thirty-eight were employed before being detained and 9 were unemployed. Thirty-one migrated to South Africa in search of jobs and a better life, 9 because of political problems in their country, 'home problems due to politics', because 'the trouble is bad in my country' and 'for protection', 4 because they had family in the country and 3 in order to study.

Six were in South Africa for less than a year, seventeen for between 1-5 years and twenty-five for more than 5 years. Twenty four entered South Africa legally and 23 illegally. Fourteen came to South Africa under political asylum, 'for protection', and 'because of trouble in their country', and 33 were for other reasons. Focus group discussions revealed that 7 of the interviewees lived in South Africa for a long period, more than 8 years, 2 for four years, 1 for 3 years and two for less than a year. Three were asylum seekers whereas others came to South Africa 'seeking greener pastures'.

Contextualisation of Xenophobia in Post-Apartheid South Africa

The term 'xenophobia' is defined in the dictionary, as a 'hatred or fear of foreigners or strangers or of their politics or culture' (Collins English Dictionary, 1991, p.1775). A foreign national is defined by The Free Dictionary as 'a person present in a country who does not currently have the right to permanent residency of that country', There are various types of foreigners that live in South Africa, refugees, asylum seekers, migrants, and immigrants. According to the White Paper on International Migration (1999: 52) an immigrant is defined as 'those who enter another country in order to make one's permanent life and home there'.

Foreign nationals, whether documented or undocumented, are often considered as an associated category of 'illegal aliens'. 'Illegal aliens' have been accused of 'taking the jobs of locals, lowering wages, increasing crime and spreading diseases' (Maharaj & Rajkumar 1997: 267), and, as a consequence, have become targets of resentment, hostility, and verbal and physical abuse. In line with this xenophobic debates exist around this category and form the basis for hatred, disagreement and hostility between South African citizens and foreigner nationals.

According to the International Organisation for Migration (IOM) (2009), violence against foreign nationals did not begin with the May 2008 attacks. Since 1994, hundreds of people have been harassed, attacked, or killed because of their position as outsiders or non-nationals. For many within and outside of government, earlier attacks were an unfortunate but largely unimportant consequence of South Africa's rapid social transformation and incorporation into the worldwide economy. Furthermore IOM (2009) reveals that there are three ways of understanding the May 2008 attacks:

there is the official definition of crime, which constructs the May violence as criminal; there is a social construction of crime, which sees foreign nationals as criminals and attacks against them as a form of social-law enforcement. Building on the perception that foreigners are an inherent social and political threat, the most nefarious perspective codes the May attacks as a form of control; a legitimate

form of vigilantism designed to protect the South African national territory.

Over the past nineteen years different political parties reacted to the influx of foreign nationals in South Africa. Attempts to stereotype foreign nations became more prevalent and the following responses from South African officials will confirm. For example in 1994 the Zulu-based Inkata Freedom Party (IFP) threatened to take ‘physical action’ if the government failed to respond to the apparent crisis of undocumented migrants in South Africa. In the same year the IFP leader and Minister of Home Affairs affirmed in a parliamentary speech:

if we as South Africans are going to compete for scarce resources with millions of aliens who are pouring in South Africa, then we can bid goodbye to our Reconstruction and Development Programme (allAfrica.com 2008:2).

In 1995 a statement from the Conference of Southern African Bishops attests:

there is no doubt that there is a very high level of xenophobia in our country One of the main problems is that a variety of people have been lumped together under the title of ‘illegal immigrants’, and the whole situation of demonising immigrants is feeding the xenophobia phenomenon.

In 1997 Defense Minister Joe Modise connected the concern of undocumented migration to the increase of crime in South Africa. In the same year Minister Buthelezi claimed that ‘illegal aliens’ cost South African taxpayers ‘billions of rands’ (allAfrica.com 2008:2-3). In November 2000 appalling images of police violence and abuse against three ‘illegal’ Mozambican immigrants was portrayed on national and international news. (Crush 2001:1).

In 2002 former Director-General of Home Affairs, Billy Masetlha commented on migrants involvement in criminal activities in the following way:

Approximately 90 per cent of foreign persons who are in RSA with fraudulent documents, i.e. either citizenship or migration documents, are involved in other crimes as well ... it is quicker to charge these criminals for their false documentation and then to deport them than to pursue the long route in respect of the other crimes that are committed (IOM 2009).

In February 2008 police were accused of promoting xenophobia after a search on the Central Methodist Church in Johannesburg. Cardinal Napier confirmed: 'the police action was entirely inappropriate, uncalled for and an unwelcome manifestation of xenophobia. It is not how refugees should be treated' (Swart 2008:4). In 2008 there were numerous incidents of xenophobic violence characterised by assaults on foreigners and the destruction of their possessions (Swart 2008:4).

On the 7 June 2013, five years after the 2008 co-ordinated attacks exploded across South Africa, Lawyers for Human Rights (LHR) said that xenophobia attacks in South Africa have not ended (Cote 2013). Cote said the reason xenophobia ended was because nothing had really been done to end the attacks, or begin the healing process.

Even more disturbing is the government's denial of the real threat of xenophobia. Hate crime legislation, which would prioritise such crimes, has been languishing in committees for years.

Legislation Governing Migration in South Africa

Immigration policy during the 1990s must be contextualised within South Africa's political transition from apartheid to democracy, which is, from an authoritarian state legislated on racism, to a democracy governed by constitutional equality. By and large hundreds of thousands, if not millions, of immigrants have crossed into South Africa over the past two decades to share in the promise of a new and vibrant nation. Official estimates on the number of undocumented immigrants living illegally in South Africa vary widely, ranging from less than one million to 12 million (Murray 2003:445). The major piece of legislation governing migration policy in South Africa is the Aliens Control Act, enacted in 1991 and consolidated into one piece of

legislation a number of provisions regulating entry and residence (Peberdy & Crush 1998: 33).

As a direct consequence of political change, two groups of people crossing borders for political reasons, namely, returning exiles and refugees became central to South African politics. The development of institutional measures to deal with returning exiles resulted in the simultaneous development of instruments to recognise and accommodate refugees. (Harris 2001:24-25). Although the early 1990s were marked by political change, and institutions such as the UNHCR were admitted to South Africa, immigration policy was generally manipulated by the apartheid state in a bid to 'entrench the policies of the past and set the parameters within which reform and reconstruction would take place' (Peberdy & Crush 1998b:33). Peberdy and Crush (1998b) explain that the 'apartheid government introduced its only major piece of immigration legislation, the Aliens Control Act, as recently as 1991' (33). This act

consolidated the numerous acts controlling the entry and lives of immigrants into a single omnibus piece of legislation. Many of the act's provisions were inherited from existing legislation, which had been passed by governments of the apartheid and pre-apartheid eras to serve racial and other imperatives and to extend the absolute powers of the state, unfettered by democratic checks and balances. The act also entrenched the 'two gates' policy, which distinguished between white immigrants and black migrants. Section 41 retained the exemption clauses, that allowed white farmers and the mining industry, to recruit migrant labour outside the country under special dispensation (Peberdy & Crush 1998b: 33 - 34).

Often hostility towards foreigners is explained in relation to limited resources, such as housing, education, health care and employment, coupled with high expectations during transition (Morris 1998; Tshitereke 1999).

The Aliens Control Act of 1991 ensured that racism remained entrenched within immigration policy. This is important for two reasons. Firstly, the act maintained racism during the early 1990s and guaranteed that the alien remained a black alien across that period. Secondly, it formed the basis for the 1995 Aliens Control Amendment Act. Despite certain amend-

ments to the 1991 Act, contemporary immigration policy has been built on a racist foundation (Peberdy & Crush 1998b). The 'serious questions' surrounding the Aliens Control Amendment Act of 1995 have resulted in the development of three legislative instruments to redress immigration in contemporary South Africa. These are The Green Paper on International Migration (1997), The White Paper on Refugees (1998) (enacted in April 2000), and The White Paper on International Migration (1999). The Green Paper challenges the existing focus on 'control and expulsion rather than facilitation and management implicit in previous immigration policy' (3). It suggests that migration is managed and planned, rather than reactive, and it offers a human rights-based alternative to the racism contained in the Aliens Control Amendment Act of 1995 (Harris 2001:26).

The White Papers on Refugees (1998) and International Migration (1999) have both developed out of the Green Paper on International Migration (1997). However, in the process of their development, the Department of Home Affairs (DHA) has made various amendments to the recommendations of the Green Paper. These amendments have been criticised for being conservative and punitive (Cooper 1999; Williams 1999). Cooper (1999) contends that Home Affairs is becoming increasingly hard-lined about foreigners. She explains that the institution has adopted a strong sovereignty principle of governance in favour of international and constitutional emphasis on individual human rights (Cooper 1999). The potential for human rights abuses is strong within both White Papers. This is because the legislation imbues the Department of Home Affairs with vast administrative powers, powers that multiply the potential for corruption and bribery because there is not a democratic system of control over the granting of status in the country, as either a refugee or a legal immigrant or migrant (Harris 2001:26). The legislation also locates responsibility for surveillance and control of foreigners within the hands of the public. It enlists public participation in the 'detection, apprehension and removal of "illegal aliens"' (Williams 1999a:2).

Foreign Nationals Incarcerated in South African Correctional Facilities

In February 2013, Correctional Services Minister Sbu Ndebele (Ndebele

2013) said that South Africa has the highest prison population in Africa. Ndebele was speaking at a meeting with senior leadership of the Police and Prisons Civil Rights Union and the Public Servants Association of SA in Pretoria. He stated that currently South Africa is ranked ninth in the world in terms of prison population, with approximately 160 000 inmates. Of this figure at least 30% of those detained were awaiting trial. Ndebele indicated:

That our offender population has remained constant, whether you remove pass laws, group areas, or apartheid laws, should make us search more urgently for answers to the high prison population in South Africa.

Drawing on available statistics from the Department of Correctional Services for the year February 2011 indicates that South Africa had a total prison population of 162 162, of which 112 467 had been sentenced, while 49 695 were awaiting trial. Foreign nationals, of whom the majority were Zimbabweans and Mozambicans, made up 8 580 of inmates. A total of 4 868 of these nationals had been sentenced, while 3712 were waiting to be sentenced. The inmates were being held in 243 facilities operated by the Department of Correctional Services. The average cost of keeping each of these inmates behind bars costs the taxpayer R123.37 daily (Department of Correctional Services 2012).

According to Correctional Services Minister Nosiviwe Mapisa-Nqakula (2011) South Africa shares its land borders with six other states in the region, but by far the majority of foreign nationals serving time in its prisons come from just two of them - Zimbabwe and Mozambique. A written reply by Correctional Services Minister Nosiviwe Mapisa-Nqakula to a parliamentary question on the 26 June 2011, states that more than two-thirds (67.5%) of foreign sentenced inmates come from these two countries. Of this total, 1 913 come from Zimbabwe, and 1 449 from Mozambique. There are a further 3 931 foreigners in prison awaiting trial, a group correctional services refers to as 'remand detainees'. Of this total, 1 887 are Zimbabweans, and 916 come from Mozambique. In contrast, 605 sentenced offenders come from Lesotho, 100 from Swaziland, 11 from Namibia and 10 from Botswana. There are also 426 Nigerians behind bars, of whom 184 are sentenced offenders and 242 in the awaiting-trial category (Nqakula: 2011).

Between 1990 and 2004 Mozambicans had the most number of deportations than and any other foreign national group (Department of Home Affairs, 2004-2005). At the end of December 2006 the number of Zimbabwean migrant deportations increased tremendously, approximately 80 000 (Department of Home Affairs 2006).

An important and interesting piece of information that emerged from the research interviews conducted with awaiting trial detainees at the Westville Correctional Centre in 2008 was that xenophobia was prevalent even within the correctional facility. It was learnt that prior to 2006, foreign inmates were incarcerated together with South African inmates. But there were periodic fights between South Africans and foreigners incarcerated detainees. In 2006 there was a major violent confrontation between the South African and foreign detainees where both foreign and local inmates were stabbed. One of the reasons postulated for the rift between South Africans and foreigners within the correctional facility was the perception that foreigners have money and they are involved in gang activities. The South African detainees also felt that the presence of foreigners in their communities was the main reason challenging their economic and physical well-being. They perceived foreigners to be criminals; troublemakers; threats to their livelihoods and carriers of diseases.

Thus since 2006 because of the xenophobic behaviour displayed by South African detainees, the decision was taken to house foreign nationals and the South African detainees awaiting trial in separate sections of the correctional institution. Discussions with correctional officials (3 of them) stated that overcrowding was a serious problem and often severely short staffed, which negatively impacted on the efficient running of the facility. Interestingly enough, the correctional officials in charge of the foreign nationals stated that although inmate on inmate violence was a common occurrence, this section (awaiting trial – foreign nationals) was one of the least problematic sections. The ones consisting of adult South African males were by far the most problematic. One official stated that in the 15 years that he has been working for correctional services, it was the first time that he encountered researchers who were interested in research pertaining to foreign nationals.

During the interviews conducted with foreign detainees at the awaiting trial section in April 2008, it was learnt that the awaiting trial cells

accommodated three times the number of inmates for which they were designed. There were up to 75 inmates in cells that were designed for only 25. Inmates slept in toilets with neither sponges nor lights. They were locked at 2 p.m. and unlocked at 7.30 am— keeping them confined to their cells for more than 17 hours of the day in close proximity to each other with no air flow and with the use of only one toilet and one shower per cell. Overcrowded conditions in the South African correctional facilities allow an easy spread of communicable diseases among inmates, of which HIV/AIDS has become the most problematic.

The tables below represent the increase in the number of foreign nationals in South Africa's Correctional Facilities over a six year period; i.e. 2006-2011. Detainees were classified in accordance with 5 categories of crime committed, namely economical- some of which are commercial crimes, shoplifting, fraud, etc.), aggressive (of which murder, assault, robbery etc. are included), sexual (some of which are rape, sexual offences, prostitution indecency, etc), narcotics (which includes drugs, possession of drugs, driving under the influence of alcohol, etc) and other (which includes all crimes not mentioned elsewhere within the crime categories stipulated by the Department of Correctional Services).

Representation of Incarcerated Foreign Nationals in South African Correctional Facility 2006-2011

Table 1: Foreign Nationals Crime Categories- 2006

Crime Categories	Unsentenced	Sentenced	Total
Economical	670	1278	1948
Aggressive	755	1416	2171
Sexual	146	228	374
Narcotics	236	400	636
Other	137	312	449
Total	1944	3634	5578

Table 2: Foreign Nationals Crime Categories- 2007

Crime Categories	Unsentenced	Sentenced	Total
Economical	733	1288	2021
Aggressive	852	1393	2245
Sexual	139	181	320
Narcotics	222	424	646
Other	204	233	437
Total	2150	3519	5669

Table 3: Foreign Nationals Crime Categories- 2008

Crime Categories	Unsentenced	Sentenced	Total
Economical	881	1415	2296
Aggressive	1117	1458	2575
Sexual	164	181	345
Narcotics	293	434	727
Other	320	719	1039
Total	2775	4207	6982

Table 4: Foreign Nationals Crime Categories- 2009

Crime Categories	Unsentenced	Sentenced	Total
Economical	1294	1700	2994
Aggressive	1629	1719	3348
Sexual	267	231	498
Narcotics	260	512	772
Other	328	271	599
Total	3778	4433	8211

Table 5: Foreign Nationals Crime Categories- 2010

Crime Categories	Unsentenced	Sentenced	Total
Economical	1294	1700	2994
Aggressive	1629	1719	3348
Sexual	267	231	498
Narcotics	260	512	772
Other	328	271	599
Total	3778	4433	8211

Table 6: Foreign Nationals Crime Categories- 2011

Crime Categories	Unsentenced	Sentenced	Total
Economical	1385	1845	3230
Aggressive	1549	1899	3448
Sexual	239	246	485
Narcotics	294	560	854
Other	245	318	563
Total	3712	4868	8580

Table 7: Total number of crimes committed by Foreign Nationals (Sentenced and Unsentenced): 2006-2011

Crime Categories	2006	2007	2008	2009	2010	2011
Economical	1948	2021	2296	2994	2994	3230
Aggressive	2171	2245	2575	3348	3348	3448
Sexual	374	320	345	498	498	485
Narcotics	636	646	727	772	772	854
Other	449	437	1039	599	599	563
Total	5578	5669	6982	8211	8211	8580

The above tables, 1 to 6, illustrate the inmate composition of foreign nationals both sentenced and unsentenced by the Department of Correctional Services for the various crime categories in the years 2006 to 2011. Of this population 43, 26% were awaiting trial and 56, 74 % sentenced. The tables reveal that there has been a 54% increase in foreign national inmates, (sentenced and uncentenced combined) for the period 2006 to 2011. The sentenced inmate population increased by 34% and the unsentenced (awaiting trial) by 91% for the same period. Due to the fact that this article records the voices of awaiting trial inmates on their perceptions and responses to crime and criminality in the country, the statistics for this segment of the correctional inmates will be focused upon.

The records from awaiting trial inmates detained for alleged offences for aggressive, economical¹, narcotics and sexual acts indicate that these offences has steadily increased from 2006 to 2011. Inmates held in relation to crimes of a violent or aggressive nature (unsentenced) is consistently the highest and accounts for more than 45% of the foreign national awaiting trial inmate population. This is followed by sexual and economical offences which accounted for 49% and 43% respectively for the year 2011.

If the total foreign national inmate population, i.e. sentenced and unsentenced, are analysed, inmates held in relation to aggressive offences account for approximately 40% followed by economical offences ,38% ; narcotics 10% and sexual, 6%. This has important implications for correctional centre management and security classification of inmates. The implications of the increase of these statistics on understanding xenophobic attacks are important because it indicates the relationship between crime and foreign nationals in South Africa.

The Analysis of Quantitative and Qualitative Data

The subsequent results are reported in the arrangement of the written survey and will be supported by answers from the focus group discussions where appropriate. In the justification that follows, the analysis will be an

¹ The terms ‘economic’ and ‘economical’ are used interchangeably in this paper as the department of correctional services has a category termed ‘economical’ yet the current scholarly usage is ‘economic.’

integration of both the responses to the survey and group discussions. The inmates direct spoken responses will be presented in Italics. It is of vital importance to demonstrate the findings in this manner, so that the voices of the foreigner nationals could be ‘heard’ and the fundamental meanings in the communication analysed. Data will be further categorised according to three main themes that emerged from the information. Voices of the inmates bring various aspects regarding xenophobia, access to justice, drug peddling and their vulnerability as inmates within the South African justice system to the fore.

When detainees were asked the reason for their incarceration and the alleged offences that they were awaiting trial for, the response were as follows:

Table 8: Alleged Offences Committed by Foreign National Detainees

Offence	No Of Detainees
Theft/Damage to Motor Vehicle	14
Robbery/Housebreaking	12
Drugs	5
Fraud	4
Assault	4
Rape	2
No Crime	6

The response to this question revealed that 16 (34%) were awaiting trial for aggressive offences including robbery and assault to cause grievous bodily harm. A further 18 (38%) were in prison for economic offences such as theft, housebreaking and fraud; five (11%) for narcotics related offences such as drug consumption and drug trafficking; and two (4%) were awaiting trial in prison for sexual offences such as rape. Six (13%) alleged that they did not commit any offence. Not one of them was awaiting trial for murder.

Table 9: Reason for the Commission of the alleged offence by Foreign Nationals Detainees

Responses	No Of Detainees
Claim to be innocent	28
Better life/Money	9
Misunderstanding	3
Mental Illness	1
No Response	6

Table 9 represents the reasons given by the inmates for the alleged offences. Sixty percent of the detainees claimed to be innocent. Reasons given for this claim were various. Some of the comments made seemed like a passionate appeal to me to understand and believe in their reasons and disclosure for being detained. One detainee said to me:

I did not commit the crime but wonder why I am in jail because I didn't even commit the crime. I just pray to God that you take me out of here. Thank you to see you people and just explain my problem to you.

Treatment of Foreign Nationals by the South African Criminal Justice System

Comments made by the respondents on their treatment by the justice system and their alleged crimes shows that often the problems of the social ills of housing settlements, i.e. crime, unemployment and lack of housing have all been attributed to foreign nationals. Thus the foreigner has become a scapegoat for antagonism and violent behavior.

One respondent said:

I did not commit the crime but the policeman abused us foreigners because I was just sitting down with my friends and just talking stories suddenly the police came and arrested us.

Another stated:

I did not commit the crime but the guy who complained and said I robbed him, he paid money to police and they came and arrest me in my house. When I tried to ask them they say I have nothing to say but I will explain everything to the court.

I was walking on road about 5 am, the time I went to help my brother at the garage so from now I don't know what my charge is. Its 7 months until now I'm still in prison.

It's not true. Another Indian man did it. He was my friend. When it was done he pointed me to be the one who did it alone to such circumstances that police pick whoever is there that's why I'm here.

When the detainees were asked if they had any other comments to make, a heartfelt appeal was extended to me:

Only one thing I can just tell you, is that us foreigners we are being too much abused here in South Africa without causing any problem. I thank you to come for visiting me.

Please I use this opportunity tell everyone to treat we foreigners as same brothers and sisters because most of us suffer innocently without being proved. All my valid document are with me to prove but they refuse to listen to me because they view all Nigerians as thieves which is unfair and they should not delay to take any illegal back to their country please here is suffering for nothing waiting to be deported. South African justice is totally against foreigners. We are always taken for granted.

Foreigners have been treated unfairly. Bails have been denied for no reason. Even if you have completed all the requirements which allows one to be granted bail. If really foreigners are committing crime, I will suggest that the government itself is to be blamed,

because they do not take seriously issues of foreigners in this country.

Vulnerability of Foreign Nationals

Some detainees said that they resorted to crime for food and for a better life,

‘because for money for food’. Because South African way of living is very different and even with my standard of education to get employment is impossible so I have to resort to crime

My God Jehovah knows from my heart that I did not commit the crime. I went to home affairs with my passport and the person that stand for me and get me my papers and work permit to work through registration. Because it was not done according to our region I got arrested.

When detainees were asked against who was the alleged crime committed, 61,7% stated that it was committed against a South African, 21,28% against another foreign national or illegal immigrant and 17% gave no response. 8,5% indicated that they worked for a syndicate and 91,5 indicated that they did not work for any syndicates. Some comments were:

I committed the crime with a group of Mozambicans and a group of South Africans. The people who committed the crime were South African, but I was driving the car.

When the detainees were asked if they were in prison before, 32% responded in the affirmative and 61, 70% in the negative. The remainder gave no response. Seventy two percent of the detainees were within the correctional institution for more than 12 months. According to South African Immigration law a foreign national is only allowed to stay for 30 days awaiting trial. From the above it is evident that this is not the policy. The average they are kept for was over 12 months.

Foreign Nationals used as ‘scapegoats’

In keeping with the questionnaires and the group discussions, 4 of the interviewees said that they were framed for the crime, viz, the Nigerians involved in drugs. The foreign national prisoners experienced xenophobia, especially from police officials. One stated:

I want to say that in South Africa the police have intimidation on the Nigerians-they want to put the Nigerians inside. There are a lot of people here who didn't do anything. It's not proper, it's not right.

While detainees are subjected to and become vulnerable to human rights abuses, one of which is being housed in overcrowded correctional cells, interviews conducted with awaiting-trial detainees revealed that when apprehending suspected foreigners, police personnel had assaulted them and extorted money.

One interviewee spoke about the manner in which he was used as a scapegoat for drugs.

Because of hatred, they hate us. I am not the first one here for any reason. They charge you because you are a Nigerian-you have drugs/sell drugs-put drugs in the house, pocket. Police make different dockets- with wrong information-so that it's difficult in court to prove otherwise.

A demand from an interviewee was:

I don't know if you people can help us-Some of our Nigerians have not committed any crime-we didn't do anything-the cops are using the opportunity-they come to you asking for money. If you don't give them money they will just say that you have to suffer. They put their hands in their pocket-I don't know where they are getting the drugs because everyone know that the Nigerians are dealing in drugs, that's why they are using the opportunity to treat us bad. They think that this person is a dealer.

In light of the above statements which document the voices of detained foreign nationals it sheds insight into the perceptions of foreigners contributing to the level of crime and xenophobia in South Africa. According to Peberdy (1999: 296) African foreigners are linked to chaos and disorder. They are also presented as illegal and therefore, as criminal. This suggests that the depiction of African migrants as 'illegals', 'illegal aliens', and 'illegal immigrants' implies both criminality and difference. The persistent use of 'illegals' to describe undocumented migrants suggests a close connection with crime and criminal acts. The SAPS (South African Police Service) also provide the number of 'illegal aliens' arrested in crime swoops, or stop and search operations. Although these figures may improve the arrest rates of the SAPS, the conflation of arrested criminals and arrested undocumented migrants creates forged links between crime and undocumented migrants. Just as African foreigners are criminalised and tainted, so xenophobia is presented as a contaminant in South African society. It appears as an unstoppable and irrational fear or plague, sweeping across the country. Through metaphors of disease, floods and the laager mentality, xenophobia is pathologised. That is, it is represented as a pathology, as something abnormal and unhealthy (Harris 2002: 10).

Conclusion and Recommendations

This article reflects on the extent to which foreign nationals have exposed dangerous levels of xenophobia among many South Africans. This article records the voices of foreign nationals on their perceptions and responses of crime and criminality at the Medium A, Westville Correctional Centre in Durban, South Africa. It documents the experiences of foreign nationals awaiting trial, in order to add their voices to the debate on crime, migration and xenophobia within South Africa. Hostility towards foreigners has become one of the most significant features within South African society. The eruption of xenophobic attacks in South Africa during May 2008 was some of the most horrendous action of crime against mankind. Whether in South Africa, or any other part of the world, xenophobic violence is destructive. Although the criminal justice system in South Africa has accomplished much considering the challenges it has faced since 1994, violent crime still remains one of the biggest challenges that it faces and

responses to crime are strongly determined by the attitudes and mechanisms of the Criminal Justice System. The increase in the crime rate in South Africa since 1994 is more often than not blamed on immigrants, without any justifiable proof. Over 5-10 million immigrants in South Africa are judged by the criminal acts of a small number of immigrants who are almost constantly working with South Africans to commit crime. The perpetual negative stereotyping of foreign nationals in the South African media and from popular public figures as ‘drug peddlers’, ‘hijackers’, ‘violent criminals’, and ‘job stealers’, fuels the negative perceptions and victimisation of foreigners.

This research has shown that in order to combat crime effectively, it is essential to identify and acknowledge the source. The reasons for xenophobic violence is multifaceted. Xenophobic violence emanates from unemployment, a lack of service delivery and accountability by the Government, the criminal element in society, the current economic situation, the lax South African migration policy and a conviction by the poverty suffering South Africans that, migrants were receiving benefits that were owed to locals. Information from this research reveals that the reason for xenophobic violence is multifaceted and that foreign nationals believe that they are treated unjustly by the South African criminal justice system. Their experiences provide evidence that foreign nationals experience many challenges in terms of crime and xenophobia and they actually become victims of the South African criminal justice system.

There is a necessity to examine xenophobic crime in South Africa in order to increase the frameworks of analysis and intervention. There should be an examination into the multiple causes of xenophobic behaviour and the study of the association between the micro and macro structures. South Africa will continue to attract economic and other migrants. Gaps in migration policy have to be addressed while at the same time acknowledging that South Africa is a state very dependent on foreign labour. Most importantly, the brutality of the xenophobic violence during May 2008 by South African citizens is indications of very deep-rooted scars that remain from the culture of violence that is an inheritance of apartheid. Nineteen years post-democracy these scars still remain and require urgent consideration by all sectors of the South African nation.

References

- Aliens Control Amendment Act 1995. No 76 of 1995 G 16741. Saflii Southern African Legal Information Institute. Office of the President. Available at: www.saflii.org. (Accessed 06 September 2013.)
- All.Africa.com. 2008, May 19. *South Africa: Burning the Welcome Mat*. Available at: <http://allafrica.com/stories/200805191656.html>. (Accessed on 20 May 2008.)
- All.Africa.com. 2008, May 15. *South Africa: Scapegoats*. Available at: <http://allafrica.com/stories/200805150173.html>. (Accessed 21 May 2008.)
- Alexandra Attacks Embarrass Us. *Sunday Times* 18 May 18 2008.
- Cote, D 2013. Denying its Xenophobia isn't Helping. Lawyers for Human Rights. *Mail and Guardian*. Available at [www.denyxenophobia](http://www.denyxenophobia.com) (Accessed 02 September 2013.)
- Collins English Dictionary 1991. 3rd Edition. Glasgow: Harper Collins.
- Cooper, C 1999. *Undocumented Aliens: An International Human Rights and Constitutional Assessment*. Johannesburg: Centre for Applied Legal Studies.
- Crush, J 2001. South African Migration Project. *South Africa Dogged by Racism and Xenophobia*. Available at: <http://www.queensu.ca/samp/migrationresources/xenophobia/htm>. (Accessed 22 March 2008.)
- Crush, J, D McDonald, V Williams, KL Everett, D Dorey & T Taylor 2009. *The Perfect Storm: The Realities of Xenophobia in Contemporary South Africa*. Kingston, Ottawa: SAMP, Idasa and Southern African Research Centre, Queen's University.
- Department of Correctional Services. Statistics 2004. Available at: www.dcs.gov.za. (Accessed 06 June 2008.)
- Department of Correctional Services. Statistics 2007. Available at: www.dcs.gov.za. (Accessed on 06/06/2008.)
- Department of Correctional Services. Statistics 2013. Available at: www.dcs.gov.za (Accessed 06 September 2013.)
- Department of Home Affairs 1999. *Draft Green Paper on International Migration*. Pretoria: Government Printer.
- Draft Green Paper on International Migration 1997. Pretoria: Government Gazette (18033), 849.

- Harris, B 2001. *A Foreign Experience: Violence, Crime and Xenophobia during South Africa's Transition*. Available at: <http://www.csvr.org.za/papers/papvtp5.htm>. (Accessed 16 October 2007.)
- Harris, B 2002. Xenophobia: A New Pathology for a New South Africa? In Hook, D & G Eagle (eds): *Psychopathology and Social Prejudice*. Cape Town: University of Cape Town Press.
- Human Rights Watch 1998. *'Prohibited Persons': Abuse of Undocumented Migrants, Asylum Seekers, and Refugees in South Africa*. New York: Rights Watch.
- IRIN 2008, April 22. *South Africa: Xenophobia has an Economic Cost*. Available at: <http://www.irinnews.org/report.aspx>. (Accessed 22 March 2008.)
- International Organisation for Migration. 2009. *Towards Tolerance, Law, and Dignity: Addressing Violence against Foreign Nationals in South Africa*. Pretoria: Regional Office for Southern Africa, Arcadia.
- Maharaj, Brij & R Rajkumar 1997. The 'Alien Invasion' in South Africa: Illegal Immigrants in Durban. *Development Southern Africa* 12,2: 255 - 73.
- Masetlha, BL 2002. Remarks at the Presentation of the Department of Home Affairs on the Migration System in South Africa to the Home Affairs Portfolio Committee. (15 April 2002). Available at: <http://www.info.gov.za/speeches/2002/02042002146p1002.htm>.
- Morris, A 1998. 'Our fellow Africans make our lives hell': The Lives of Congolese and Nigerians Living in Johannesburg. *Ethnic and Racial Studies*, 21,6: 1116 - 1136.
- Murray, M 2003. Alien Strangers in Our Midst: The Dreaded Foreign Invasion and 'Fortress South Africa'. *Canadian Journal of African Studies* 37,2/3: 440 - 466.
- Ndebele, S 2013. SA Prisons most Crowded in Africa – Minister. SAPA. Available at: www.news24.com. (Accessed 05 September 2013.)
- Nqakula, NM 2011. Most Foreign Prisoners from Zim, Moz. Available at www.xenophobiaNews24.com. (Accessed 30 July 2013.)
- Peberdy, SA & J Crush 1998a. *Trading Places: Cross-border Traders and the South African Informal Sector*. Southern African Migration Project 6. Cape Town: Idasa.

- Peberdy, SA & J Crush 1998b. Rooted in Racism: The Origins of the Aliens Control Act. In Crush, J (ed): *Beyond Control: Immigration & Human Rights in a Democratic South Africa*. Cape Town: Idasa.
- Peberdy, SA 1999. Selecting Immigrants: Nationalism and National Identity in South Africa's Immigration Policies, 1910-1998. Unpublished Doctoral thesis, Queens University, Canada.
- Philip, R 2008. Strangers in a Strange Land at the Mercy of our Government. *The Sunday Times* May 18.
- Philip, R 2008. No One Hates Foreigners Like We Do. *The Sunday Times*. May 21.
- Simao, P 2008. South Africa Moves to Quell Xenophobic Attacks. Available at: <http://africa.reuters.com/wire/news/usnL20083042.html>. (Accessed 21 May 2008.)
- South African Department of Home Affairs 2004. *Refugee Backlog Project*. Available at: http://home-affairs.pwv.gov.za/refugee_project.asp (Accessed 23 March 2008.)
- South African Migration Project (SAMP) 2006. Available at: http://www.queens.ca/samp/migrationnews/article.php?Mig_News_ID=341. (Accessed 05 October 2007.)
- South African Police Services. 2001-2007. *Crime for the RSA National Total*. Available at: www.saps.gov.za/statistics. (Accessed 09 May 2008.)
- Swart, W 2008. Beatings, Theft and Arson as Mobs Turn on Foreigners. *The Sunday Times* May 13.
- True Crime Expo 2006. SA Crime in Context. Available at: <http://www.truecrimeexpo.co.za>. (Accessed 09 May 2008.)
- Tshitereke, C 1999. Xenophobia and Relative Deprivation. *Crossings* 3,2: 4 - 5.
- United Nations High Commissioner for Refugees. 1998. *Information for Refugees and Asylum Seekers in South Africa*. Pretoria: United Nations High Commissioner for Refugees.
- We are Still at Odds with Our Self-worth. *The Sunday Times* 25 May 2008.
- White Paper on Refugees (Draft). 1998. Pretoria: Government Gazette (18988), 396.
- White Paper on International Migration. 1999. Pretoria: Government Gazette (19920), 406.
- Williams, V 1999. Spot the Alien. *Crossings* 3,2.

Shanta Balgobind Singh

Shanta Balgobind Singh
Criminology
School of Applied Human Sciences
University of KwaZulu-Natal
singhsb@ukzn.ac.za