
XENOPHOBIC ATTACKS AND THE BOND OF AFRICAN UNION TREATY AND THE DISINTEGRATION OF REGIONAL ECONOMIC COOPERATION

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Abstract

The now recurrent incident of xenophobic violence / attacks in South Africa, which has often been targeted at foreign nationals especially Africans, is no longer a new trend in the country and in Africa. However, the renewed recent xenophobic violence / attacks have commanded serious attractions, reactions and tensions both within and beyond the African region/continent. The researchers, inquired, in the main, into the impact of xenophobic violence/attacks on African unity and regional economic integration. This work interrogates the African unity and regional integration in the Context of the Constitutive Act of the African Union and the Researchers observed that save proper attention is given to curb the spate of xenophobic violence/attacks in Africa, it could untie the bond of African Union treaty and occasion the undesired disintegration of regional economic cooperation. This work recommends, in the main, that to avert self-help, and for the bond of African Union treaty and regional economic cooperation to be sustained, the African Union Assembly should make haste to create a firm, functional, and operational legal framework for the interpretation and application of the Constitutive Act and for the enforcement of the objectives and principles of the African Union.

Keywords: Xenophobic, Violence, Attacks, Africans, Regional, Cooperation

1. Introduction

The term ‘regional economic cooperation’ can be defined as the willingness on the part of the countries to work together in attaining regional economic goals on the belief that, in the long run, the cooperation will enhance economic interests, benefits and welfare. National interest might need to be subordinated in the short-run for the sake of regional interest.

Economic cooperation is usually pursued in three basic ways to wit: coordination of national economic projects, harmonization of economic policies, and integration of economic activities. Countries can benefit greatly from economic cooperation when they share common resources.

Several bilateral and multilateral treaties¹ on trade and economic issues are birthed in pursuance of the imperative of economic cooperation. Bilateral and multilateral

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arrangements to promote economic cooperation in the region of Africa have advanced tremendously in certain sectors such as tourism, mining, soil conservation, environment, transport, fishing, agriculture, power, water, training, finance and investment, security, telecommunications, trade, labour, *et cetera*.

The African Union (AU) is intended to be a platform for the promotion of cohesion (regional integration and African unity) through socio-economic integration, continental research on all fields including science and technology and the development of common positions on issues of common interest.² The Union (AU) also establishes institutions that nurture solidarity among African peoples, coordinate its actions with sub-regional economic communities and forges a common front in international negotiations and cooperation.³

2. Conceptual Clarification

Over the years, South Africa has recurrently witnessed widespread xenophobic attacks in provinces such as Johannesburg, Gauteng, Western Cape, Free State, Limpopo and KwaZulu Natal. The word 'xenophobia' is coined from two Greek words to wit: *xénos* and *phóbos*. The said Greek word *xénos* means 'the stranger' and 'the guest' whereas the Greek word *phóbos*, means 'fear'. Thus, xenophobia stands for 'fear of the stranger', but usually the term is taken to mean 'hatred of strangers'. Xenophobia can be understood as "an attitudinal orientation of hostility against non-natives in a given population".⁴

An overview of xenophobic attack in South Africa and the South African Constitution on human rights will be highlighted in this paper. Again, the paper intends to interrogate the impact of xenophobic violence in South Africa on African unity and regional economic integration.

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¹ It is good to note that by virtue of Section 12 of the Constitution of the Federal Republic of Nigeria 1999, a treaty can only command the force of law in Nigeria upon the domestication of such treaty vide an Act of the National Assembly.

² The Constitutive Act, Paragraph 1 of the Preamble provides that member States are 'inspired by the noble ideals which guided the founding fathers of our Continental Organization OAU and generations of Pan-Africanists in their determination to promote unity, solidarity, cohesion and cooperation among the peoples of Africa and African States' <https://au.int/sites/default/files/pages/34873-file-constitutiveact_en.pdf> accessed on September 29, 2019; G. A. Aneme & U. Lamikanra, 'UPDATE: Introduction to the Norms and Institutions of the African Union', *Hauser Global Law School Program* (2018) <https://www.nyulawglobal.org/globalex/African_Union1.html#_edn32> accessed on October 14, 2019.

³ *Ibid*, Paragraph 7 of the Preamble, Article 3, (a)-(d), (i)-(m) of the Act.

⁴ UNESCO, *Xenophobia* <<http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/xenophobia/>> accessed on October 4, 2019.

3. Examination of African Unity in the Context of the Constitutive Act of the African Union

It is noted that the Constitutive Act of the African Union is the Regional Instrument through which the moribund Organization of African Unity (OAU) eventually metamorphosed into African Union (AU).⁵ The said Constitutive Act replaced the Charter of the Organization of African Unity.⁶ The Constitutive Act of the African Union represents a serious commitment to the promotion and protection of human rights, at least in comparison to the Charter of the Organization of African Unity (OAU Charter).⁷

The Constitutive Act of the African Union was adopted by the OAU Assembly of Heads of States and Governments in Lome in July 2000. By March 2001, all members of the OAU had signed the Constitutive Act and hence the OAU Assembly at its 5th extraordinary summit held in Sirte, Libya, from 1st to 2nd March 2001 declared the establishment of the African Union. However, to fulfill the legal requirements for the African Union, the Constitutive Act had to wait for ratification by two thirds of the member states of the OAU. It was on 26 April 2001 that this requirement was met. On 26 May 2001, the Constitutive Act entered into force thereby making the African Union a legal and political reality.⁸

It is imperative to observe that over the years, issues revolving around African unity, identity and development have been of great concern to Africans. This explains why the Organization of African Unity (OAU), which later metamorphosed into African Union (AU) was formed.⁹ One of the primary objectives of the Constitutive Act of the African Union is to promote regional economic cooperation and integration. This objective is in tandem with the economic and foreign policy objectives set out under Sections 16 and 19 of the Constitution of the Federal Republic of Nigeria 1999 respectively.

Significantly, the first paragraph of the Preamble to the Constitutive Act of the African Union makes it clear that the Heads of State and Government of the Member States of the Organization of African Unity (OAU) were “Inspired by the noble ideals, which guided the founding fathers of our Continental Organization and generations of Pan-Africanists in their determination to promote unity, solidarity, cohesion and cooperation among the peoples of Africa and African States”. The Preamble equally records that the Heads of State and Government of the Member States of the Organization of African

⁵ Article 2 of the Constitutive Act of the African Union, <https://au.int/sites/default/files/pages/34873-file-constitutiveact_en.pdf> accessed on September 29, 2019.

⁶ *Ibid*, Article 33.

⁷ J.M. Isanga, ‘The Constitutive Act of the African Union, African Courts and the Protection of Human Rights: New Dispensation?’, *Santa Clara Journal of International Law* (2013) 11(2) 267 – 302 at 270.

⁸ H. Wubie & Z. Tsegaw, *Historical Background of the African Union*, <<https://www.abysinialaw.com/about-us/item/377-historical-background-of-the-african-union>> accessed on September 29, 2019.

⁹ N. M. Nnyigide & M. C. Egenti, *African Unity, Identity and Development in Some Contemporary Igbo Poems*, <<https://www.ajol.info/index.php/og/article/download/109605/99370>> accessed on October 2, 2019.

Unity (OAU) were “determined to promote and protect human and peoples’ rights, consolidate democratic institutions and culture, and to ensure good governance and the rule of law”.

In line with the foregoing inspiration and determination reproduced above as encapsulated in the Preamble to the Constitutive Act of the African Union, Articles 3 and 4 of the Constitutive Act go further to provide for the objectives¹⁰ and principles¹¹ respectively of the African Union which, *inter alia*, include:

1. achievement of greater unity and solidarity between the African countries and the peoples of Africa;¹²
2. promotion of peace, security, and stability on the continent;¹³
3. promotion and protection of human and peoples’ rights in accordance with the African Charter on Human and Peoples’ Rights and other relevant human rights instruments;¹⁴
4. establishment of the necessary conditions which enable the continent to play its rightful role in the global economy and in international negotiations;¹⁵
5. promotion of sustainable development at the economic, social and cultural levels as well as the integration of African economies;¹⁶
6. respect for democratic principles, human rights, the rule of law and good governance;¹⁷
7. promotion of social justice to ensure balanced economic development;¹⁸
8. respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities.¹⁹

The above objectives and principles should act as the bedrock of foreign policy of the governments of African States. It is thus apposite to submit that the Constitutive Act of the African Union is the bond, general framework and/or code for African unity, solidarity, cohesion, integration and cooperation including regional economic cooperation. Accordingly, it is submitted that the objectives and principles of this Bond should be respected by every African State so as to avoid a policy summersault and total collapse of the Union.

¹⁰ The Objectives are provided for under Article 3 of the Constitutive Act.

¹¹ The Principles are provided for under Article 4 of the Constitutive Act.

¹² Article 3(a) of the Constitutive Act of the African Union,

<https://au.int/sites/default/files/pages/34873-file-constitutiveact_en.pdf> accessed on September 29, 2019.

¹³ Article 3(f), *Ibid.*

¹⁴ Article 3(h), *Ibid.*

¹⁵ Article 3(i), *Ibid.*

¹⁶ Article 3(j), *Ibid.*

¹⁷ Article 4(m), *Ibid.*

¹⁸ Article 4(n), *Ibid.*

¹⁹ Article 4(o), *Ibid.*

4. Overview of Xenophobic Attack in South Africa and the South African Constitution on Human Rights

The latest xenophobic attack in South Africa happened in the month of September 2019.²⁰ It has been reported and submitted that migrants, foreign nationals, and other individuals who seek refuge in South Africa, are entitled to all the rights and freedoms that are enshrined in the Constitution except for the right to vote. Accordingly fundamental human rights cannot be denied to anyone, regardless of their citizenship or ethnic origin.²¹ We observe at this point that the Bill of Rights encapsulated in Chapter 2 of the Constitution of the Republic of South Africa 1996 enshrines the rights of all people in South Africa and affirms the democratic values of human dignity, equality and freedom in the country²². In particular, Section 9 (1) of the Constitution of the Republic of South Africa 1996 provides that “everyone is equal before the law and has the right to equal protection and benefit of the law” and in pursuance and/or furtherance of this equality, Section 9 (2), (3), (4) and (5) of the same Constitution provide against discrimination. Xenophobia and xenophobic attacks, therefore, constitute breach of South African Constitution and a violation of human rights. Meanwhile, despite the human rights provisions in the Bill of Rights, the recurrent xenophobic attacks against foreign nationals in South Africa have evolved into a chronic challenge and serious threat to African unity and its regional economic integration.

It has been observed that the manifestation of xenophobia attacks on Africans can be traced to 1995; youths in the Alexandra township of Johannesburg destroyed and looted the homes of undocumented migrants and subsequently marched the migrants to the police station where they requested that the foreigners be immediately deported to their home countries. The violent xenophobic attacks continued on migrants in 2008 when South Africans targeted immigrants from Kenya, Uganda, Mozambique, Zimbabwe, Malawi and other African countries, which resulted in attacks and looting of immigrants’ homes and businesses, and killing more than twenty foreign nationals in just one week. By the time the violence subsided a total of sixty foreign citizens were killed and thousands displaced from their homes and businesses.²³

²⁰ H. W. French, *South Africa’s Xenophobic Turn Against Other Africans Is a National Failure* <<https://www.worldpoliticsreview.com/articles/28179/south-africa-s-xenophobic-turn-against-other-africans-is-a-national-failure>> accessed on October 4, 2019.

²¹ Media Statement: SAHRC Condemns Attacks on Non-Nationals <<https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/1827-media-statement-sahrc-condemns-attacks-on-non-nationals>> accessed on October 5, 2019.

²² Constitution of the Republic of South Africa 1996, *Sections 7(1), 9, 10, 11 and 12*. Section 11 provides that everyone has the right to life.

²³ Bello & S. R. Tunde, ‘The Implication of Xenophobic Violence on Nigeria-South Africa Relations’, *Journal of International Studies* (2017) 13, 117-125 at 120 <<http://jis.uum.edu.my/images/pdf2/8jis2017.pdf>> accessed on October 4, 2019.

The alarming recurrence of xenophobic attacks in South Africa in recent years is increasingly leading to South Africa acquiring a reputation of being a country that is unwelcoming and hostile to nationals of other African countries. Given that South Africa plays a dominant role on the continent, such a negative view of the country has implications for African unity and economic integration. It could, for instance, make citizens of other countries adopt a retaliatory stance against South Africans and South African interests (including economic interests) in their countries.²⁴

Xenophobic attacks therefore command some great weight of adverse effects on the unity, solidarity, cohesion and cooperation including regional economic cooperation among the peoples of Africa and African States. The said adverse effects may lead to the breaking of diplomatic ties existing between African countries which if sustained over a period of time can then occasion a total collapse of African unity and regional economic cooperation. African countries may be forced to withdraw into their separate shelves similar to what happened in ancient Israel when there was disharmony in perceived common interest and the people chorused in unison “to your tents, O Israel” and thereafter went their separate ways.²⁵ If the above scenario is allowed to replay in Africa, it will do more economic harm than good and may be the beginning of the breaking of Africa’s regional bond of peace, security, trust and unity. Accordingly, the viability and/or sustainability of the multilateral/mutual economic relationship enjoyed by African countries can be adversely affected if the recurrent incidents of xenophobic violence are not adequately curtailed.

5. The Impact of Xenophobic Attack(s) on African Unity and Regional Economic Integration

The incidents of xenophobic attacks in South Africa have unfortunately become recurrent and these incidents are not without grave impact on African unity and regional economic integration. Such attacks do not promote economic cooperation and integration. It damages diplomatic relations, which forms the backbone of international trade and could keep a viable partner of African solidarity in isolation and make her to reap unpleasant economic and political consequences. Moreover, xenophobic attacks can have a negative effect on trade negotiations especially the tariffs on goods, import duties which exist between South Africa and other African States.

6. Remedies for Victims of Xenophobic Attacks and State Responsibility

The first manifestation of xenophobic attacks on Nigerians can be traced to August 2000, when seven Africans, among whom were two Nigerians, were killed in the Cape flats in

²⁴ A. Okem, L. Asuelime & R. Adekoye, ‘Re-visiting Xenophobia in South Africa and its Impact on Africa’s Integration’, *Africa Insight* (2015) 45(2), 75 – 85 <https://www.academia.edu/25206831/Re-visiting_Xenophobia_in_South_Africa_and_its_Impact_on_Africas_Integration> accessed on October 4, 2019.

²⁵ Holy Bible, 1 Kings 12: 16.

the district of Cape Town. Since then, xenophobic violence and attacks on Nigerians have become recurrent incidents in South African. Beside the loss of innocent lives in these recurrent incidents of xenophobic attacks, Nigerians in South African have lost businesses and properties worth millions of dollars because of the attacks.²⁶ On the economic front, there are a lot of South Africa businesses operating in Nigeria in different sectors including telecommunications services, mining, agriculture, oil and gas, aviation and construction. Some of these businesses include MTN, Eskom Nigeria, South Africa Breweries, Power Gaint, Stanbic Bank, Eskom Nigeria, Refresh product, Shoprite and Multi Choice among others.²⁷

Responding to the latest wave of xenophobic attacks, angry Nigerian youths took to the streets in some parts of the country to protest the xenophobic attacks on Nigerians and other black immigrants in South Africa. Property worth about ₦500 million, including cars, shops and businesses, especially those thought to be owned by South Africans, were either looted or destroyed in the said reprisal attacks. It was the first time Nigerian youths would react violently to xenophobic attacks in South Africa. There were reported cases of violence and attacks on Shoprite outlets and MTN facilities in Lagos, in Uyo, and in Ibadan. A group of angry women, said to be relatives of those who fell victim to the attacks in South Africa, were said to have triggered the retaliatory attack in Lagos.²⁸

Thus, the latest wave of xenophobic violence and attacks on foreign nationals including Nigerians in South Africa has resulted in reprisal attacks and/or application of self-help by some Nigerians in Nigeria against South African businesses. Meanwhile, in Nigeria, self-help is forbidden; the law does not allow any person in Nigeria to take laws into his hands. In *Elesie Agbai & Ors. v. Samuel I. Okogbue*²⁹, the Court held, *inter alia*, that: "...For anyone to resort to self-help, that is, taking the law into his hands...is the very antithesis of orderliness. It is a retrogressive step which, if encouraged, will lead to chaos, anarchy, and the law of the fittest."³⁰

Likewise, in *Union Bank of Nigeria Plc v. Alhaji Adams Ajabule & Anor.*³¹, the Supreme Court of Nigeria reiterated this position of law when it held, *inter alia*, that:

²⁶ Bello & S. R. Tunde, 'The Implication of Xenophobic Violence on Nigeria-South Africa Relations', *Journal of International Studies* (2017) 13, 117-125 at 120
<<http://jis.uum.edu.my/images/pdf2/8jis2017.pdf>> accessed on October 5, 2019

²⁷ Bello & S. R. Tunde, 'The Implication of Xenophobic Violence on Nigeria-South Africa Relations', *Journal of International Studies* (2017) 13, 117-125 at 120
<<http://jis.uum.edu.my/images/pdf2/8jis2017.pdf>> accessed on October 5, 2019.

²⁸ Xenophobia: What are Nigeria's legal options? <<https://www.marketscreener.com/SHOPRITE-HOLDINGS-LTD-3743310/news/Xenophobia-What-are-Nigeria-s-legal-options-29190868/>> accessed on October 5, 2019.

²⁹ (1991) LPELR-225(SC) p. 97, paragraph E-F.

³⁰ Per Akpata, JSC.

³¹ (2011) LPELR-8239(SC) p. 28, paragraphs D – E, per Mohammed, JSC.

“Having regard to the decision of this Court in *Chief Ojukwu v. Governor of Lagos State* (1986) 1 N.W.L.R. (Pt. 18) 62 in which this Court condemned in strong terms that self-help has no place in our civilized world as it is against the observance of the Rule of Law in a democratic set up like ours...”

The inference from the foregoing position of law is that the approach of Nigerians to xenophobic attacks must fall within the province of the rule of law. This principle is succinctly recalled³² in *Elsie Agbai & Ors v. Samuel I. Okogbue*, *inter alia*, that:

“...In the area where the rule of law operates, the rule of self-help by force is abandoned. Nigeria being one of the countries in the world even in the third world which proclaim loudly to follow the rule of law, there is no room for the rule of self-help to operate.”³³

Having noted the foregoing position of the law in Nigeria *vis-à-vis* the application of rule of law as against the rule of self-help, it is further noted that one of the responsibilities of a government and indeed a foreign high commission in any country is the protection of the country's citizens in a country of its operations. Consequent upon the latest incident of xenophobic attacks in South African, the Nigerian government summoned South Africa's Ambassador to Nigeria, recalled the Nigerian Ambassador to South Africa, and dispatched a special envoy to South Africa to express Nigeria's displeasure over the xenophobic violence/attacks on Nigerian citizens in South Africa. The Nigerian government strongly condemned the xenophobic attacks and went on to withdraw from the World Economic Forum meeting in Cape Town.³⁴ It was recorded elsewhere that the Nigeria Minister of Foreign Affairs, Geoffery Onyeama reported that the Government of Federal Republic of Nigeria has signified, *inter alia*, that: “The South African government has to assume its responsibilities and protect Nigerians in South Africa and we have to hold them to account and they have to do that as well as pay full compensation.”³⁵

Beside and beyond the expression of displeasure by the Nigerian government and the demand for payment of compensation, other legal options are available to Nigeria against South Africa in the circumstances. The African Charter on Human and People's Rights has adequate provisions for the protection of the rights of African citizens. It is suggested that the Federal Government of Nigeria may wish to proceed to the African Court on Human and Peoples Right to enforce the fundamental rights and freedoms of

³² Recalled with approval from the case of *Emeka Ojukwu v. Governor of Lagos State & 2 Ors.* (1986) 1 NWLR (Pt. 18) 621 at page 636.

³³ *Elsie Agbai & Ors. v. Samuel I. Okogbue* (supra) p. 97, paragraphs E - G

³⁴ African Arguments, ‘Xenophobic attacks: Why the official outrage from Nigeria this time?’ <<https://africanarguments.org/2019/09/19/xenophobic-attacks-why-the-official-outrage-from-nigeria-this-time/>> accessed on October 5, 2019.

³⁵ Premium Times, ‘Xenophobia: We'll not cave in to South Africa, Nigerian Government vows’, <<https://www.premiumtimesng.com/news/headlines/350612-xenophobia-well-not-cave-in-to-south-africa-nigerian-govt-vows.html>> accessed on October 5, 2019.

Nigerians affected by the xenophobic violence since Nigeria is a signatory to the Charter. Nigerians may equally proceed to seek redress in the appropriate South African Court under the Bill of Rights as encapsulated in Chapter 2 of the 1996 South African Constitution and under any other applicable law(s).

By doctrine of state responsibility, South Africa is required to make adequate reparations to Nigerian victims of the xenophobic violence, and ensure that the perpetrators are speedily brought to justice to serve as a deterrent to others.

The Constitutive Act of the African Union makes provision for the establishment of a Court of Justice for the African Union and went on to provide that the statute, composition and functions of the said Court of Justice shall be defined in a Protocol relating thereto.³⁶ Affirmed as the ‘principal judicial organ of the Union’³⁷, its statute, composition, and functions were eventually set out in a separate Protocol.³⁸ The said separate Protocol provides for the competence/jurisdiction of the Court of Justice.³⁹ Although, the Protocol of the Court entered into force in February 2009, 30 days after 15 Member States had ratified it, the Court never became operational. Presently, 44 Member States have signed the 2003 Protocol and 18 have ratified it;⁴⁰ the latest ratification was on 24 January 2013.⁴¹ In 2008, the AU Assembly merged the Court of Justice with the African Court on Human and Peoples’ Rights into a single court established as the African Court of Justice and Human Rights.⁴² On June 27, 2014, the ‘Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights’⁴³ was adopted vide which the Court is vested with an original and appellate jurisdiction including international criminal jurisdiction.⁴⁴

³⁶ The Constitutive Act of the African Union, *Article 18*

³⁷ Protocol of the Court of Justice of the African Union, *Article 2(2)*.

³⁸ Protocol of the Court of Justice of the African Union (adopted 11 July 2003, entered into force 11 February 2009) <https://au.int/sites/default/files/treaties/36395-treaty-0026_-_protocol_of_the_court_of_justice_of_the_african_union_e.pdf> accessed on October 7, 2019.

³⁹ *Ibid*, *Article 19*.

⁴⁰ List of Countries which have signed, ratified/acceded to the Protocol of the Court Of Justice of the African Union <https://au.int/sites/default/files/treaties/36395-sl-protocol_of_the_court_of_justice_of_the_african_union_1.pdf> accessed on October 7, 2019.

⁴¹ African Union, *Protocol of the Court of Justice of the African Union* <<https://au.int/en/treaties/protocol-court-justice-african-union>> accessed on October 6, 2019.

⁴² Protocol on the Statute of the African Court of Justice and Human Rights (Single Protocol) (n 58), (adopted July 2008), *Article 2*. <https://au.int/sites/default/files/treaties/36396-treaty-0035_-_protocol_on_the_statute_of_the_african_court_of_justice_and_human_rights_e.pdf> accessed on October 7, 2019.

⁴³ Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights <https://au.int/sites/default/files/treaties/36398-treaty-0045_-_protocol_on_amendments_to_the_protocol_on_the_statute_of_the_african_court_of_justice_and_human_rights_e-compressed.pdf> accessed on 7 October 2019.

⁴⁴ *Ibid*, *Article 3*.

Unfortunately, we observed that the two Protocols to wit: Protocol on the Statute of the African Court of Justice and Human Rights and Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights are yet to meet the minimum requirement of ratification by at least 15 Member States of the African Union. The implication of the above position is that the merger of the African Union Court of Justice and the African Court on Human and Peoples' Rights will not become effective until the minimum ratification requirement is met for the aforesaid two Protocols. Worse still, it is observed that Nigeria has not ratified any of the three Protocols relating to the African Union Court of Justice.⁴⁵ It is equally observed that even when eventually the African Union Court of Justice becomes operational, the enforcement of its judgments will pose a great challenge as the provisions made for the enforcement of judgments, in the event of non-compliance, are inadequate. For instance, Chapter VIII, Article 52 of Protocol of the Court of Justice of the African Union provides that: "Where a party failed to comply with a judgment, the Court may, upon application by either party, refer the matter to the Assembly, which may decide upon measures to be taken to give effect to the judgment."

Similar provisions on execution/enforcement of judgments, are contained in the Protocol on the Statute of the African Court of Justice and Human Rights⁴⁶ save for the further provision that "the Assembly may impose sanctions by virtue of paragraph 2 of Article 23 of the Constitutive Act"⁴⁷.

For the avoidance of doubt, paragraph 2 of Article 23 of the Constitutive Act provides that:

Furthermore, any Member State that fails to comply with the decisions and policies of the Union may be subjected to other sanctions, such as the denial of transport and communications links with other Member States, and other measures of a political and economic nature to be determined by the Assembly.

Finally, we observe that neither the Constitutive Act nor any of the relevant Protocols provides adequate judicial and executive framework for the actualization of the objectives and principles of the African Union. For example, unlike the UN Charter, the

⁴⁵ <https://au.int/sites/default/files/treaties/36395-sl-protocol_of_the_court_of_justice_of_the_african_union_1.pdf>, <https://au.int/sites/default/files/treaties/36396-sl-protocol_on_the_statute_of_the_african_court_of_justice_and_human_rights.pdf>, <<https://au.int/sites/default/files/treaties/36398-sl-PROTOCOL%20ON%20AMENDMENTS%20TO%20THE%20PROTOCOL%20ON%20THE%20STATUTE%20OF%20THE%20AFRICAN%20COURT%20OF%20JUSTICE%20AND%20HUMAN%20RIGHTS.pdf>> accessed on 7 October, 2019.

⁴⁶ Article 46 (4) of the Protocol on the Statute of the African Court of Justice and Human Rights.

⁴⁷ *Ibid*, Article 46(4).

Constitutive Act does not provide for expulsion of a member State that persistently violates the objectives and/or principles, including the human rights principles, set out in the Constitutive Act.⁴⁸

7. Conclusion and Recommendations

African economy in the 21st century can scarcely survive in the face of xenophobic attacks. The recurrence and spate of xenophobic attacks in South African can safely be said to be the inevitable implication and/or manifestation of the high level of intolerance and discrimination, which are contrary to the bond of the African Union Treaty and economic regional cooperation. The said recurrent incidents of xenophobic attacks in South Africa against Nigerians and other African nationals can evoke consequences of adversely affecting the socio-economic and political relationship between South African and other African countries including Nigeria whose nationals have been victims of the attacks.

If xenophobia⁴⁹ in South Africa or anywhere in Africa is not effectively curtailed, one of the natural consequences will be the untying of the bond of African Union and the disintegration of regional economic cooperation. More so, if the recurrence and spate of xenophobic violence are not curbed in Africa, the continent may inevitably be overtaken by hostilities, cold-wars, and/or even full blown wars between affected countries for example between South Africa and Nigeria.

In the premises of the foregoing findings, it is recommended as follows:

1. To avert self-help in/by African countries affected by xenophobic violence, and for the bond of African Union treaty and regional economic cooperation to be sustained, the African Union Assembly should create a firm, functional, and operational legal framework for the interpretation and application of the Constitutive Act and for the enforcement of the objectives and principles of the African Union.
2. The merger of the African Union Court of Justice with the African Court on Human and Peoples' Rights is not expedient. The African Court on Human and Peoples' Rights should be allowed to exist as a separate but special regional Court and vested with exclusive jurisdiction to adjudicate on matters between African countries arising from human rights violations in Africa. The African Union Court of Justice should then be clothed with criminal jurisdiction and its civil jurisdiction be filtered, redefined and/or refined to cover civil disputes other than human rights enforcement cases.

⁴⁸ J.M. Isanga, 'The Constitutive Act of the African Union, African Courts and the Protection of Human Rights: New Dispensation?', *Santa Clara Journal of International Law* (2013) 11(2) 267 – 302 at 273.

⁴⁹ Here, xenophobia represents the discrimination and intolerance of foreign nationals especially of other African nationals.

3. The Constitutive Act should be amended to expressly donate power to the African Union Assembly to expel any Member State that persistently violates the objectives and/or principles, including the human rights principles, set out in the Act. Equally, the Act should be amended to spell out other sanctions that may be imposed by the Assembly on a defiant Member State.
4. The responsibilities of Member States should be outlined in the Constitutive Act as specifically as possible and appropriate compensations / sanctions prescribed for failure of any Member State to discharge any of her responsibilities.
5. Provisions should be made in the Act and in the relevant Protocols for mandatory emergency meeting of the African Union Assembly in cases of emergency situations involving two or more Member States so that a stitch in time will save nine.
6. Member States of the African Union should not delay the ratification of Protocols adopted for the actualization of the objectives and principles of the Constitutive Act.
7. The Constitutive Act of the African Union should be subject of review and possible amendment(s) from time to time so as to upgrade the Act to meet up with current regional realities.
8. In particular, the Government of South Africa should take steps to forestall further incidences of xenophobic violence / attacks and equally see to it that victims of xenophobic violence / attacks are adequately compensated. The Government of South Africa should also ensure that perpetrators of xenophobic attacks are caught up by the long arm of the law and brought to book.