



Assessing AU framework for making Xenophobic violence strategically unprofitable: South Africa as the first test case

By

IBILOYE Oluyemi Joshua

Institute of Governance and Development Studies, Nasarawa State University Keffi

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Abstract

This study repurposes well-established trade law mechanism for continental human rights-based accountability, recognising that the economic harm caused by xenophobic violence to African nationals, including destroyed businesses, forced displacement, disrupted supply chains, and suppressed cross-border investment, is functionally equivalent in its trade-distorting effects to the economic emergencies for which World Trade Organisation (WTO) safeguard mechanisms were originally designed. There is no gainsaying that recurrent xenophobic violence in South Africa; 2008, 2015, 2019, and 2026 has evolved from episodic unrest into a systematic political tool used to mobilise electoral support, deflect governance failures, and scapegoat African foreign nationals. This study assesses the viability of an African Union (AU) framework designed to render such violence strategically unprofitable through economic and diplomatic consequences. It pursues two objectives; examine the conditions under which a member state's failure to prevent xenophobic violence can be construed as a material breach of the African Continental Free Trade Area (AfCFTA), justifying temporary safeguard tariffs; and second, to investigate how an AU Accountability Caucus, constituted through a binding Memorandum of Understanding (MoU), can invoke hosting forfeiture measures without awaiting full AU consensus. Using a qualitative, desk-based policy analysis of documented violence (2008 - 2026), electoral patterns, AU legal instruments, and trade law precedents, the study integrates deterrence theory with continental governance practice. The findings show that where four cumulative conditions exist; electorally correlated violence, systematic law enforcement failure, an ignored formal warning, and demonstrable economic harm to other African nationals, a material breach of AfCFTA principles may be established, justifying temporary, proportional safeguard tariffs modelled on WTO mechanisms. The study further finds that a legally binding Accountability Caucus can bypass AU consensus paralysis and impose automatic diplomatic consequences, particularly hosting forfeiture, upon predefined trigger events. The study recommends the adoption of a supplementary AfCFTA legal instrument recognising xenophobic violence as a sanctionable trade breach and the formation of a binding AU Accountability Caucus among willing states to ensure automatic diplomatic enforcement. Together, these measures reposition the AU from reactive condemnation to credible continental deterrence.

Keywords: Accountability Caucus, AfCFTA, Strategic Deterrence, Sanctions Regime, Xenophobia.

Introduction

In an era of deepening regional economic integration, the relationship between political violence, human rights protection, and trade governance has emerged as one of the most consequential and least resolved tensions in international law and institutional design (United Nations Conference on Trade and Development. (UNCTAD). (2023). Across the globe, regional economic bodies have increasingly been called upon to do more than liberalise markets; they have been compelled to confront the uncomfortable reality that the conditions necessary for sustainable trade security of persons, predictability of the investment environment, and the rule of law are inseparable from the political conduct of their member states (Munyai, 2026). The

* Corresponding author: **IBILOYE Oluyemi Joshua**

Department of Security and Strategic Studies, Nasarawa State University, Keffi, Nigeria.

European Union's deployment of Article 7 conditionality mechanisms against Hungary and Poland, the East African Community's suspension graduated sanctions architecture against coup-perpetrating governments all reflect a growing global consensus that regional bodies must evolve beyond deliberative assemblies into credible enforcement mechanisms capable of making norm violation strategically costly for state actors (Institute for Security Studies, 2022). The effectiveness of deterrence depends critically on the certainty, automaticity, and credibility of sanctions; when they are inconsistently applied, consensus-dependent, or easily vetoed, they lose deterrent force and may even embolden the very conduct they were designed to prevent (Soumahoro, 2023).

Simultaneously, the global trade governance architecture has begun to recognise, however tentatively, that trade agreements cannot be hermetically sealed from the political and human rights conduct of their signatories. The inclusion of labour standards in the United States-Mexico-Canada Agreement, the European Union's suspension of trade preferences under the Generalised Scheme of Preferences for states failing to uphold core human rights conventions, and the International Labour Organisation's linkage of decent work standards to trade competitiveness all demonstrate that the once-rigid boundary between trade law and human rights accountability is dissolving (Ahiagba, 2026). The emerging principle is that when a state's political conduct systematically destroys the conditions of trust, security, and free movement upon which cross-border trade depends, that conduct is not merely a moral failure but a functional breach of the trade architecture that makes shared prosperity possible. It is within this global intellectual and institutional moment where deterrence theory, trade law, and human rights accountability are converging in ways previously unimagined that this study situates its intervention.

Africa's experiment with continental governance, through the African Union (AU) inaugurated in 2002, was conceived as a solemn compact among liberation-weary nations that the dignity of every African person would be sacrosanct within the continent's borders, that no African would ever again be a stranger on African soil, and that the solidarity forged in the crucible of anti-colonial and anti-apartheid struggle would be institutionalised into an enforceable continental order (AU Constitutive Act, 2000). Article 4 of the Constitutive Act enshrines the principle of non-indifference to grave human rights violations, the African Charter on Democracy, Elections and Good Governance prescribes graduated sanctions to restore constitutional order, and the African Continental Free Trade Area (AfCFTA) Agreement, signed by 54 of 55 AU member states, articulates a vision of shared continental prosperity premised on the free movement of goods, services, capital, and persons across national borders (African Union, 2000, 2007, 2018). Yet between this solemn legal architecture and the lived reality of African nationals, there exists a wide gap of institutional failure that has grown wider with each passing decade. Nowhere is this failure more illustrated than in the

recurring waves of xenophobic violence that have periodically convulsed South Africa; the continent's most industrialised economy and the nation whose liberation from apartheid was made possible by the extraordinary material and political sacrifices of the very African states whose nationals are today its most vulnerable targets (Zegar & City, 2025).

South Africa's four documented cycles of large-scale xenophobic violence in 2008, 2015, 2019, and 2026 have resulted in hundreds of deaths, thousands of injuries, and the destruction of properties and livelihoods belonging to Nigerian, Ethiopian, Zimbabwean, Malawian, Ugandan, Somali, and other African nationals worth millions of dollars (Odife & Okeke, 2026; Misago, 2025; Akinrinde & Tar, 2021). Crucially, these cycles are not spontaneous eruptions of social discontent but, as empirical evidence confirms, constitute a systematic political tool deployed by South African political actors in the run-up to municipal and national elections to mobilise support, deflect attention from domestic governance failures in housing, unemployment and service delivery, and scapegoat African foreign nationals as convenient proxies for structural economic failure (Akinrinde & Tar, 2021; Misago, 2025). The AU's response to each cycle has been uniform in its inadequacy; strongly worded communiqués, ad hoc diplomatic missions, and expressions of deep concern, followed by institutional silence and the absence of any binding consequence for the offending state. South Africa has never been sanctioned, suspended, or stripped of hosting rights following any of these attacks. This pattern of condemnation without consequence has produced precisely the outcome that deterrence theory predicts: in the absence of credible enforcement, xenophobic violence has remained a strategically profitable political tool, and its predictable recurrence has become, the AU's perceived paralysis (Ahiagba, 2026).

The tragic deepens when one recalls that African nations did not stand idly by during apartheid. The continent waged one of the most sustained and costly solidarity campaigns in modern history. South Africa was officially banned from all CAF and FIFA competitions from 1958 until 1992, missing eighteen consecutive Africa Cup of Nations tournaments the longest exclusion in the competition's history, led by CAF's first president, Ethiopian Ydnekatchew Tessema. In 1976, led by Nigeria, twenty-eight African nations demanded that New Zealand be barred from the Montreal Olympics for sending its rugby team on a tour of apartheid South Africa; when the IOC refused, these nations withdrew their entire contingents just days before the opening ceremony a sacrifice of athletes' lifelong dreams for the principle of sporting isolation. Beyond boycotts, the Frontline States Angola, Botswana, Lesotho, Mozambique, Tanzania, Zambia, and Zimbabwe formed a coalition that bore the economic brunt of South Africa's retaliation while providing military and logistical support to liberation movements like the ANC (Arnold, 2010; Busari, 2025). And at the United Nations, African nations led the lobbying for economic sanctions, culminating in Resolution 1761 of 1962; Nelson Mandela himself later confirmed that these international sanctions played a crucial role in ending

apartheid (Lisson, 2000). In short, the very states whose nationals are now attacked, looted, and displaced from South Africa are those that sacrificed their comfort to bring apartheid to a standstill.

This historical debt, however, has not translated into contemporary accountability. The structural explanation for the AU's paralysis is twofold. First, the AU possesses no binding instrument that explicitly defines a member state's failure to prevent xenophobic violence as a material breach of continental legal or economic obligations specifically as a breach of the AfCFTA's foundational principles of continental integration, shared prosperity, and the security of cross-border economic actors (Ahiagba, 2026). The AfCFTA's Article 3 mandates the promotion of inclusive socio-economic development and the creation of a single continental market; yet that market is systematically undermined when African entrepreneurs are looted, killed, and displaced with institutional impunity (African Union, 2018). Second, the AU's existing sanctioning mechanisms, which demonstrated genuine deterrent effect when consistently applied reducing the average number of coups from 2.2 per year (1960-1989) to 0.8 per year (2000-2019) are structurally dependent on consensus among all fifty-five member states, a requirement that functions in practice as a veto available to the offending state's allies (Soumahoro, 2023; Institute for Security Studies, 2022).

It is against this backdrop that this study advances two interconnected research imperatives. First, under what specific conditions can a state's failure to prevent xenophobic violence be legally construed as a breach of AfCFTA's foundational principles, thereby justifying temporary safeguard tariffs on goods originating from the offending state? This question repurposes established trade-law mechanisms for continental human-rights accountability, recognising that the economic harm caused by xenophobic violence destroyed businesses, forced displacement, disrupted supply chains, suppressed cross-border investment is functionally equivalent to the economic emergencies for which WTO safeguard mechanisms were designed (WTO, 1994). The study proposes four cumulative conditions that mirror WTO adjudicatory standards: (a) a documented, electorally correlated pattern of violence; (b) systematic law enforcement and judicial failure; (c) an unheeded formal warning period; and (d) a demonstrable causal link to economic harm suffered by other states' nationals. Second, how can a coalition of willing AU member States an AU Accountability Caucus bound by a binding Memorandum of Understanding (MoU) invoke automatic hosting forfeiture measures without awaiting full AU consensus. Drawing on the precedent of the AU's Peace and Security Council, which acts on behalf of the Assembly without a plenary vote on every operational decision, this caucus model would specify pre-defined trigger events, automatic three-year forfeiture of summit-hosting rights, and a seven-day verification protocol by an independent panel under the African Commission on Human and Peoples' Rights. Registered with the AU Commission and the United Nations, the MoU would prevent the offending state

from vetoing its own accountability, converting South Africa's historical debt from a rhetorical resource into a legally enforceable instrument.

Significance of the Study

This study significantly reframes the continental response to recurrent xenophobic violence exemplified by South Africa's predictable waves in 2008, 2015, 2019, and 2026 from reactive moral condemnation to a proactive, legally enforceable deterrence architecture grounded in African solidarity and the principle of reciprocal obligation. By systematically assessing a two-pronged AU framework that interprets a member state's failure to prevent xenophobic violence as a material breach of the AfCFTA's spirit this thus justify temporary emergency safeguard tariffs and operationalises an AU Accountability Caucus through a binding memorandum of understanding that can invoke automatic forfeiture of summit-hosting rights without awaiting full AU consensus. This study offers a novel, legally coherent, and politically realistic toolkit for transforming the African Union from a chronically slow, weak deliberative body into an effective enforcement mechanism. This study's significance is seen as it quantifiably re-centres the moral and historical debt owed by South Africa to other African states that sacrificed their comfort to battle apartheid to a standstill, using that debt as the ethical foundation for economic and diplomatic consequences; second, it provides the first detailed model, to the extent of literature, for retrofitting the AfCFTA's dispute resolution mechanism to address human-rights-based failures, thereby expanding the trade-and-security nexus within continental law; and third, it creates an adaptable precedent that can be deployed against any member state not just South Africa that weaponises xenophobic rhetoric for electoral gain.

Statement of the Problem

The African Union was conceived as a solemn pact among liberation-weary nations that no African would ever again be a stranger in their own continent. AU's Constitutive Act enshrines the inviolable right to human dignity, the rejection of impunity, and the sacred duty of member states to protect the person and property of all who walk African soil. However, South Africa's four predictable, election-linked waves of xenophobic violence against fellow African nationals in 2008, 2015, 2019, and again in 2026 each characterised by political and economic actors weaponising anti-foreigner rhetoric to mobilise electoral support, distract from domestic failures, and scapegoat African nationals, is not a domestic affair but a continental betrayal of the very solidarity that buried apartheid and built the Union.

These recurring atrocities, which have resulted in hundreds of deaths, thousands of injuries, and the destruction of properties worth millions of dollars, are not random or spontaneous but constitute a systematic political tool. Yet the African Union has consistently responded with reactive condemnations and ad hoc

diplomatic missions that lack legal teeth, economic consequences, or automatic enforcement mechanisms. The fundamental problem is twofold: first, the AU has no binding instrument that defines a member state's failure to prevent xenophobic violence as a material breach of continental legal or economic agreements specifically the African Continental Free Trade Area (AfCFTA), whose foundational principles of shared prosperity and continental integration are directly undermined when South African mobs loot shops owned by Nigerian, Ugandan, Ethiopian, Zimbabwean, Malawian, or Somali nationals with impunity. Second, the AU's existing sanctioning mechanisms require consensus among all 55 member states, a political paralysis that has historically shielded South Africa from meaningful consequences, as demonstrated by the absence of any sanctions or hosting-rights forfeiture following the 2019 and 2026 attacks.

Therefore, the critical unanswered questions are; under what specific conditions can a state's failure to prevent xenophobic violence be legally construed as a breach of AfCFTA's foundational principles, thereby justifying temporary safeguard tariffs on its goods? And how can a coalition of willing AU member states an AU Accountability Caucus bound by a memorandum of understanding invoke automatic hosting forfeiture measures without waiting for the full, often paralysed, consensus of the AU Assembly? Without answering these questions, the AU will remain trapped in a cycle of condemnation without consequence, and xenophobic violence will remain a strategically profitable political tool for South Africa and any other member state that chooses to follow its path.

Research Questions

This study provides answers to the following questions

- i. Under what conditions can failure to prevent xenophobic violence be construed as a material breach of the AfCFTA foundational principles, justifying temporary tariffs on goods from the offending state?
- ii. How can an AU Accountability Caucus with a binding MoU among signatory states invoke hosting forfeiture measures without awaiting full AU consensus?

Objectives of the Study

The main objective of this study assesses AU framework for making Xenophobic violence strategically unprofitable, with South Africa as the first test case. While specific objectives

- i. Examine conditions under which a failure to prevent xenophobic violence can be construed as a material breach of the AfCFTA foundational principles, justifying temporary tariffs on goods from the offending state.

- ii. Investigate how an "AU Accountability Caucus with a binding MoU among signatory states invoke hosting forfeiture measures without awaiting full AU consensus.

Literature Review

Conceptual Framework

Failure to Prevent Xenophobic Violence

The failure to prevent xenophobic violence is not a mere human rights violation or a domestic policing failure, but as a violation of continental economic law that fundamentally undermines the African Continental Free Trade Area's (AfCFTA) foundational principles as enshrined in its Agreement, particularly Article 3 which emphasises the promotion of continental integration, sustainable and inclusive socio-economic development, and the creation of a single market for goods and services. The conceptual leap here is that when a host state systematically fails through deliberate policy neglect, impunity for perpetrators, or incendiary political rhetoric to protect the persons and property of fellow African nationals lawfully resident or trading within its territory, that state is not merely failing its moral or policing duties; it is actively eroding the very conditions of trust, security, and predictability upon which cross-border trade, investment, and the free movement of persons (a companion AU protocol) depend.

Therefore, such failure can be legally construed as a material breach of the AfCFTA's spirit and objectives, because it discourages African entrepreneurs from investing, disrupts supply chains that rely on migrant labour and cross-border traders, and signals to other member states that their nationals will be economically and physically vulnerable in the offending state. The conditions under which this breach crystallises include;

- a) a documented pattern of xenophobic violence linked to electoral timelines, demonstrating political weaponisation rather than spontaneous criminality;
- b) clear evidence that the host state's law enforcement and judicial systems have systematically failed to prevent, investigate, or prosecute such violence over multiple cycles;
- c) a formal warning and grace period issued by the AU or the AfCFTA Secretariat that has gone unheeded; and
- d) a direct causal link between the violence and demonstrable economic harm to nationals of other African states (destroyed businesses, forced displacement, loss of employment).

Once these cumulative conditions are met, the aggrieved state(s) would be justified in invoking the emergency safeguard clause conceptually modelled on existing WTO safeguard mechanisms but repurposed for continental human-rights-based breaches to impose temporary tariffs on goods originating from the offending state, not as a punitive trade war measure but as a proportional, time-limited, and legally

defensible remedy that restores the economic equilibrium and incentivises behavioural change, thereby transforming the AfCFTA from a purely trade-liberalising instrument into a credible enforcement tool for pan-African accountability.

Accountability Caucus

The AU Accountability Caucus is conceptualised as a voluntary but legally bound coalition of member states drawing initially from the frontline states and other nations that bore the heaviest sacrifices during the anti-apartheid struggle; Nigeria, Tanzania, Zambia, Algeria, Ghana, Zimbabwe, Ethiopia, that agree through a formal Memorandum of Understanding (MoU) to act collectively and automatically in response to predefined trigger events, thereby bypassing the chronic paralysis of the full AU Assembly where all 55 member states must reach consensus before sanctions can be imposed. The conceptual innovation lies in moving away from the ideal of universal consensus. The universal consensus has repeatedly failed to produce consequences for South Africa after the 2019 and 2026 attacks toward a coalition of the willing model that still operates within the broader AU legal architecture but does not wait for the slowest or most reluctant member to agree.

The MoU would specify, in legally binding language, that upon the occurrence of a trigger event defined as a verified outbreak of xenophobic violence resulting in deaths or mass displacement, coupled with the offending state's failure within a specified period (e.g., 14 days) to demonstrate adequate preventive and prosecutorial action the Caucus shall automatically invoke hosting forfeiture measures without any further vote or deliberation among Caucus members. These measures would include the immediate cancellation of the offending state's right to host any AU summit, ministerial meeting, technical conference, or other continental event for a fixed renewable period; three years; the relocation of any scheduled events to another Caucus member state; and a coordinated diplomatic demarche. The legal basis for such consensus-bypass draws from precedents within the AU itself: the Peace and Security Council already acts on behalf of the Assembly in matters of peace and security without requiring a full Assembly vote on every operational decision.

Furthermore, the MoU would be structured as a binding international agreement registered with the AU Commission and the United Nations, meaning that signatory states are contractually obligated to enforce the consequences against the offending state, and the offending state cannot veto its own punishment because the Caucus does not require its consent. The Caucus does not ask permission it simply acts, and the offending state suffers real diplomatic and reputational costs (loss of hosting prestige, revenue, and continental visibility) that are not contingent on the approval of its sympathisers.

Strategic Deterrence

Strategic deterrence, in this study, is conceptualised as the use of threatened or actual diplomatic and economic penalties to dissuade political and economic actors from weaponising xenophobic violence for electoral or other domestic gain. Rooted in classical deterrence theory, which posits that the certainty and severity of threatened sanctions can discourage actors from embarking on certain policies, strategic deterrence operates on the logic that rational actors will refrain from costly behaviour when the anticipated consequences outweigh the expected benefits (Michanie, 2025; Costea, 2026). Within the AU framework, diplomatic deterrence encompasses measures such as suspension of voting privileges, forfeiture of summit-hosting rights, public naming, and coordinated diplomatic demarches all of which impose reputational and political costs on the offending state. The AU's zero tolerance policy on unconstitutional changes of government (UCG), which reduced the average number of coups from 2.2 per year between 1960 and 1989 to 0.8 between 2000 and 2019, provides empirical evidence that credible diplomatic deterrence can alter state behaviour when applied predictably and consistently (Louw-Vaudran et al., 2022).

Economic deterrence, by contrast, operates through the imposition of temporary safeguard tariffs on goods originating from the offending state, modelled on existing WTO safeguard mechanisms but repurposed for continental accountability (Ventouratou, 2024). Such measures directly affect the profit calculations of economic actors including corporations and investors who might otherwise tolerate or benefit from xenophobic rhetoric. The conceptual innovation here is the recognition that xenophobic violence acts as a non-tariff barrier to trade, instilling fear in regional entrepreneurs and discouraging the cross-border investments necessary for industrial growth. By linking economic consequences directly to failures of protection, strategic deterrence makes xenophobic violence strategically unprofitable for both its political sponsors (who lose diplomatic standing and hosting privileges) and its grassroots perpetrators (who operate in an environment where the state faces credible external pressure to prosecute).

Sanctions Regime

A sanctions regime, as conceptualised herein, refers to the comprehensive legal and policy framework through which the African Union imposes punitive measures on member states that violate continental norms, decisions, or legal obligations. The AU has established itself among its global counterparts as a pacesetter in the use of sanctions against member states to correct deviation from agreed norms, decisions and frameworks (Institute for Security Studies, 2022). Provisions from AU legal instruments establish three situations under which sanctions may be imposed: default on contribution payments, unconstitutional changes of government (UCG), and non-compliance with decisions and policies; in practice, an additional dimension has emerged where the AU aligns with regional sanctions pronouncements (Institute for Security Studies, 2022). The

provisions against UCGs have been most consistently used due to the frequency of coups on the continent, applied twenty times against fifteen member states between 2000 and 2022 through either suspension from the AU or targeted sanctions (Okafor, 2026). The effectiveness of this sanction regime has depended greatly on predictable and consistent application regardless of the member state affected. However, the resurgence of coups since 2019, with the average number rising from 0.8 to 1.8 per year, has revealed critical weaknesses: lack of firmness and consistency in treatment of coup countries has undermined the AU's legitimacy, diluted the deterrence effect of sanctions, and fostered defiance among coup plotters.

This study therefore conceptualises an expanded sanctions regime specifically targeting xenophobic violence, drawing on the existing legal architecture including Articles 23 and 30 of the Constitutive Act, the African Charter on Democracy, Elections and Good Governance of 2007 which prescribes sanctions to restore constitutional order, and the AfCFTA dispute settlement mechanism which provides a rules-based framework for resolving trade disputes between member states. The proposed regime would define xenophobic violence as a sanctionable offence, with graduated consequences ranging from diplomatic protests to suspension of hosting rights and, ultimately, temporary economic tariffs, thereby creating a binding, predictable, and enforceable continental accountability architecture.

Empirical Review

Odife and Okeke (2026) examined the Nigeria-South Africa relations in the light of attainment of AU-Agenda 2063 through the lens of Xenophobic attacks in South Africa from spanning 2008-2023. The study adopted the qualitative research method using the descriptive and analytical approach of presenting historical events. Findings from the study submits that the unhealthy relations between both countries and the incidents of xenophobia hampers the economic development of both countries and could impede the realisation of Agenda 2063.

Misago (2025) in a multideterminant model of xenophobic violence in South Africa, analysed the trajectories from deprivation to mobilization. The study engaged a longitudinal qualitative study based on extensive and comparative qualitative data from a nearly two-decade long and ongoing research. The study used a case-study approach across multiple South African townships and informal settlements, analysing six determinants: socio-economic/political deprivation, xenophobic beliefs, collective discontent, political economy, mobilization, and governance. Findings from the study submits that existing explanations for xenophobic violence are inadequate as many lack empirical backing and others are incomplete due to their reductionist approach. Instead, the six determinants and their interconnections constitute the necessary and sufficient conditions for xenophobic violence to occur. Significantly, mobilization and governance are

identified as critical transmission belts meaning that violence does not emerge spontaneously but is enabled and activated by identifiable actors and institutional failures.

Akinrinde and Tar (2021) carried out an empirical-causative analysis of the politics of Xenophobia in South Africa. The study focused on instrumentation of xenophobia by political actors; political science, electoral politics, and migration. The study employed a mixed-methods empirical-causative analysis of both qualitative political discourse analysis and quantitative trend analysis of electoral cycles and xenophobic outbreak timelines. The study examines documented waves of violence in 2008, 2015 and 2019, cross-tabulated with political party manifestos, parliamentary speeches, and electoral campaign materials from major South African political parties. Results that emanated from the study revealed a direct causal relationship between the run-up to elections (municipal and national) and a measurable spike in anti-foreigner rhetoric and subsequent violence. Political actors are found to weaponise xenophobic narratives to mobilise support, distract from domestic governance failures on unemployment, housing shortages, and scapegoat foreign nationals particularly Nigerians.

Soumahoro (2023) interrogated why sanctions are not preventing coups in Africa through the lens of African Union sanctions regime, deterrence theory, unconstitutional changes of government (UCGs), and enforcement mechanisms. The study employed a policy-focused empirical assessment drawing on longitudinal data from 1960 to 2023, analysing all AU and Regional Economic Community (REC) sanctions imposed in response to UCGs (coups). The methodology includes statistical trend analysis of coup frequency, comparative case analysis of sanction outcomes (e.g., Guinea vs. Madagascar), and assessment of AU suspension decisions against coup countries (Sudan, Mali, Guinea, Burkina Faso, Niger, Gabon). Findings from the study shows that between 1960 and 2019, the AU's zero tolerance of coups policy and consistent sanctions with evident success reduced the average number of coups from 2.2 per year (1960-1989) to 0.8 per year (2000-2019). However, since 2019, the effectiveness has collapsed: the average number of coups rose to 1.8 per year (2023), and sanctions did not prevent repeated overthrows in Sudan, Mali and Burkina Faso nor deterred the unlawful assumption of power in Guinea, Niger, Chad and Gabon. The study identifies inconsistent application and the absence of automatic, pre-defined consequences as key reasons for the weakening deterrent effect.

Ahiagba (2026) reviewed African Union criticism over Xenophobia response through the lens of AU institutional effectiveness, xenophobia, AfCFTA integration, and continental governance. This study is an empirical policy critique based on public statements made by a senior political official (Communications Director of Ghana's NPP) and cross-referenced with documented AU responses to the 2026 xenophobic outbreak. The analysis examines the gap between AU declarations and enforcement, as well as the economic

implications of inaction for the AfCFTA. Findings from the study established that the AU suffers from perceived paralysis in the face of escalating xenophobic tensions, with a historical reluctance to interfere in the internal affairs of its most influential member states, a policy that critics say has evolved into a policy of indifference. Critically, the analysis identifies xenophobia as a non-tariff barrier to trade that acts as instilling fear in regional entrepreneurs and discouraging the cross-border investments necessary for industrial growth. The study concludes that the AU's perceived inability to enforce its own protocols on the free movement of persons suggests that the path toward total continental integration is hindered by a lack of political will.

Theoretical Framework

Strategic Deterrence Theory

Strategic deterrence theory posits that rational actors; political and economic elites within member states modify their behaviour when the perceived costs of a contemplated action demonstrably exceed its expected benefits (Schelling, 1966). In the context of this study, xenophobic violence has historically remained a cheap, consequence-free electoral tool because the African Union's consensus-based sanctioning mechanisms lack the fundamental elements of credible deterrence: certainty, severity, and speed. By relying on reactive moral condemnation rather than material consequences, the AU has inadvertently created an environment where the electoral gains of weaponizing anti-foreigner rhetoric vastly outweigh the negligible institutional costs. This study operationalizes deterrence by shifting the AU's governance model from one of passive deliberation to one of active, pre-defined, and automatic consequence, ensuring that potential perpetrators recognize the high probability of immediate retaliation (Soumahoro, 2023).

The framework's economic dimension applies deterrence through the imposition of temporary safeguard tariffs, transforming xenophobic violence from an electorally profitable strategy into a source of substantial economic loss for the offending state. By classifying institutional impunity as a material breach of the African Continental Free Trade Area (AfCFTA) foundational principles, this study introduces a predictable, rules-based mechanism that directly affects the profit margins of political and economic stakeholders (Ventouratou, 2024). This leverages the logic of trade-based deterrence, where the threat of market access restriction functions as a powerful instrument to compel compliance, mirroring the efficacy of safeguard frameworks within the World Trade Organisation (WTO, 1994). When political actors realize that weaponizing xenophobia will result in tangible trade penalties that hurt their national economy and their own political survival, the expected utility of such violence shifts, compelling them to prioritize state protection over electoral scapegoating.

The study's diplomatic dimension, embodied by the AU Accountability Caucus, addresses the deterrence failure caused by the current requirement for 55-state consensus. Deterrence is effective only when consequences are applied consistently and rapidly (Institute for Security Studies, 2022); thus, the proposed Memorandum of Understanding (MoU) acts as a consensus-bypass mechanism that guarantees the automaticity of punishment. By pre-committing a coalition of willing states to invoke hosting forfeiture measures upon the occurrence of specific trigger events, the Caucus removes the offending state's ability to veto its own consequences, thereby maximizing the certainty of punishment (Michanie, 2025). This institutional innovation creates a credible deterrent threat, signalling to potential perpetrators that xenophobic mobilization will be met with immediate, non-negotiable diplomatic isolation and loss of continental prestige, which, when combined with economic safeguards, creates a multi-layered barrier against the recurrence of violence.

Methodology

This study employed a qualitative, desk-based research design utilising policy analysis and secondary sources. The research questions are explored through a conceptual policy analysis drawing on public records, electoral timelines, and diplomatic practice. Data are drawn from publicly available records of xenophobic attacks in South Africa (2008–2026). South African electoral calendars and political party manifestos. Official statements from the Nigerian and South African governments. Reports from the African Commission on Human and Peoples' Rights and media investigations. Academic literature on xenophobia, electioneering, and economic diplomacy.

Discussion of Findings

A legally consequential finding of this study, is that a member state's systematic and politically instrumentalised failure to prevent xenophobic violence against fellow African nationals does, under identifiable and cumulative conditions, constitute a material breach of the AfCFTA's foundational principles as enshrined in Article 3 of the Agreement, and that this breach, when properly established, provides sufficient legal and policy justification for the imposition of temporary safeguard tariffs on goods originating from the offending state. This finding rests on four cumulative conditions that, taken together, crystallise the breach: a documented and electorally correlated pattern of xenophobic violence demonstrating political weaponisation rather than spontaneous criminality; clear and systematic failure by the host state's law enforcement and judicial institutions to prevent, investigate, or prosecute perpetrators across multiple cycles; a formal warning and grace period issued by the AU or AfCFTA Secretariat that has gone unheeded; and a demonstrable causal link between the violence and quantifiable economic harm suffered by nationals of other African member states. This finding strongly corroborate work of Akinrinde and Tar (2021); Ahiagba (2026)

and globally align with The European Union's deployment of trade preference suspensions under its Generalised Scheme of Preferences against states failing to uphold human rights conventions (European Commission, 2021); and the World Trade Organisation's Agreement on Safeguards (WTO, 1994).

The second finding of this study is that the chronic paralysis of the full AU Assembly's consensus requirement, which has historically shielded South Africa and other powerful member states from meaningful accountability, can be structurally bypassed through the creation of an AU Accountability Caucus: a voluntary but legally bound coalition of willing member states, formalised through a binding Memorandum of Understanding registered with both the AU Commission and the United Nations, that commits its signatories to invoke automatic hosting forfeiture measures against an offending state upon the occurrence of pre-defined trigger events, without requiring the consent, deliberation, or approval of the full AU Assembly. This finding represents the study's most direct contribution to the political science of African regional governance, offering a legally coherent and institutionally grounded solution. This aligns with the works of Soumahoro (2023); Institute for Security Studies (2022). The finding that the Caucus should draw its initial membership primarily from the frontline nations that bore the heaviest material and political costs of the anti-apartheid struggle, including Nigeria, Tanzania, Zambia, Algeria, Ghana, Zimbabwe, and Ethiopia, is not merely a historical or sentimental proposition but a strategically and legally significant one. By anchoring the Caucus in the moral and historical debt that South Africa owes to its liberation-era allies, this study quantifiably re-centres the ethical foundation of accountability in a way that is both politically resonant and institutionally defensible.

Conclusion

The study concludes that a member state's systematic and politically instrumentalised failure to prevent xenophobic violence constitutes, under four cumulative and legally verifiable conditions, a material breach of the AfCFTA's foundational principles sufficient to justify temporary safeguard tariffs, is a legally actionable and historically overdue reinterpretation of the relationship between trade governance and human rights accountability on the African continent. By establishing that the AfCFTA's Article 3 mandate of inclusive socio-economic development and continental market integration is structurally incompatible with the institutional impunity that has allowed South Africa's electorally correlated cycles of xenophobic violence in 2008, 2015, 2019, and 2026 to destroy the livelihoods, properties, and lives of Nigerian, Ethiopian, Zimbabwean, Malawian, Ugandan, and Somali nationals without trade consequence, this study performs a conceptual and legal service that the AfCFTA's architects left undone: it connects the Agreement's integrationist ambitions to an enforcement mechanism capable of making their violation strategically costly.

The second finding of this study, that the AU Accountability Caucus constituted through a binding Memorandum of Understanding among frontline states and liberation-era allies can structurally bypass the full Assembly's consensus paralysis and invoke automatic hosting forfeiture measures upon verified trigger events, represents an equally decisive and perhaps even more immediately realisable contribution to the architecture of African continental governance, because unlike the tariff mechanism which requires the retrofitting of the AfCFTA's dispute resolution architecture, the Caucus MoU can be negotiated, signed, and registered with the AU Commission and the United Nations by a critical mass of willing states without requiring the permission, participation, or approval of the offending state or its sympathisers within the broader continental membership, making it the more politically proximate of the two mechanisms and the one whose implementation could most immediately alter the strategic calculus of South African political actors preparing for the next electoral cycle.

Recommendations

- i. This study recommends that the AfCFTA Secretariat and AU Commission adopt a supplementary protocol codifying four cumulative conditions electorally correlated violence, systemic judicial failure, an unheeded warning, and economic harm to other states' nationals as a binding breach of Article 3, operationalised through a Human Rights-Trade Adjudication Panel that authorises temporary safeguard tariffs on goods from the offending state. Tariffs must be automatically suspended upon verified prosecution of perpetrators, law enforcement reform, and compensation to victims, transforming the AfCFTA into a self-enforcing accountability architecture that makes xenophobic violence permanently unprofitable.
- ii. This study recommends that Nigeria, Tanzania, Zambia, Algeria, Ghana, Zimbabwe, and Ethiopia convene an extraordinary summit to sign a binding MoU constituting the AU Accountability Caucus, specifying pre-defined trigger events, automatic three-year hosting forfeiture, and a seven-day verification protocol by an independent panel under the African Commission on Human and Peoples' Rights. Registered with the AU Commission and UN Secretariat, the MoU prevents the offending state from vetoing accountability, converting South Africa's historical debt into a legally enforceable instrument that ensures no African state treats fellow nationals' safety as a consequence-free electoral tool.

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