

Refugees: Court recommends mediation

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Mediation was mooted in the Constitutional Court on Monday as a possible solution to the dispute over temporary shelters set up in Gauteng to house victims of xenophobic violence.

The court has given counsel for the refugees and the government until 10am on Tuesday to agree on a possible solution to the problem that avoids a court hearing -- this after argument on whether the Constitutional Court was the proper forum to hear an appeal brought by a group of foreign nationals and the Consortium for Refugees and Migrants in South Africa.

The consortium and foreign nationals Odinga Mamba, Vasco Mitabele, Kisa Milinga Issa and Davidzo Aabidah Maduviko are challenging the Pretoria High Court's August 12 ruling that the government was not obliged to provide the victims of xenophobic violence with temporary accommodation for more than two months.

More than 60 people died, hundreds were injured and nearly 20 000 displaced in a wave of xenophobic violence that started in Alexandra, Johannesburg, on May 12 and swept through the province and other parts of the country.

Gauteng authorities set up seven tent camps to house temporarily those displaced by the violence. One of the camps has since been closed.

The provincial government had originally planned to close the rest by July 31, but extended the deadline to August 15. It has since undertaken not to close the camps until the matter is finalised.

"Has the question of mediation arisen at all?" Justice Albie Sachs asked during the hearing of argument in the matter, which started at 2pm on Monday and ran until about 6.30pm.

"Do you think there is any prospect mediation might help resolve, if not the whole problem, part of it?" Sachs asked.

Counsel for the Gauteng government, Quintus Pelser, SC, replied that the government had tried mediation, and organisations were assisting the government in mediating between certain communities and displaced people.

Nadine Fourie, counsel for the foreign nationals, indicated to the court that they did not oppose some kind of mediation, but were in favour of an order requiring the government to provide the court with progress reports.

The court has expressed reservations at the appeal being brought directly to it instead of first being heard in a lower forum such as a high court or by a full Bench of the Supreme Court of Appeal.

However, it acknowledged that referring the matter back to be heard in the lower courts might not be in the best interests of justice as this would mean it could take two years or more to finalise.

Justice Kate O'Regan suggested that, instead of hearing the appeal on "papers drafted in great haste", the Constitutional Court enrol the matter towards the end of its sitting at the end of September. It was clear the matter was one of enormous "social distress", she observed.

It seemed to her that a bit of time, coupled with a willingness to resolve the situation "may well be the best way to resolve the problem".

By the time the application came to court, water would have flowed under the bridge, she suggested.

The foreigners are asking the government to come up with a reintegration plan, publish it for public comment within 30 days and implement it within 60 days. The government has argued that this is simply not feasible and will not work.

It has asked the court to let the government deal with the refugees itself, confident it will do so with the "utmost circumspection" even in the absence of an order to this effect.

However, the foreigners contend that the government has done absolutely nothing to help their reintegration into the communities that turned on them, other than give them more time to move out of the temporary shelters. -- Sapa

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