

**THE IMPACT OF THE SOUTH AFRICAN BILL OF RIGHTS  
ON DISCRIMINATION AND THE SEARCH FOR EQUALITY.**

**BY**

**ABDUL KARIM FUNNAH**

**A dissertation submitted in partial fulfilment of the requirements  
for the degree of Master of Laws in the Department of Public Law  
and Legal Philosophy in the Faculty of Law at the University of  
North-West.**

**SUPERVISOR: PROFESSOR. M. MBAO.**

**EXTERNAL EXAMINER: PROFESSOR. F. VENTER.**

**SUBMITTED: 4<sup>TH</sup> SEPTEMBER 2002.**

## STATUTORY DECLARATION

I, PROFESSOR MELVIN MBAO DECLARE THAT THIS DISSERTATION ENTITLED, THE IMPACT OF THE SOUTH AFRICAN BILL OF RIGHTS ON DISCRIMINATION AND THE SEARCH FOR EQUALITY BY ABDUL KARIM FUNNAH FOR THE DEGREE OF MASTER OF LAWS IN THE DEPARTMENT OF PUBLIC LAW AND LEGAL PHILOSOPHY, BE ACCEPTED FOR EXAMINATION.

---

**Professor Melvin Mbao.**  
**Supervisor.**

**DECLARATION OF ABDUL KARIM FUNNAH  
IN TERMS OF RULE G 48**

I declare that the dissertation for the degree of Master of Laws at the University of North-West hereby submitted, has not previously been submitted by me for a degree at this or any other university, that it is my work in design and execution and that all material herein contained has been duly acknowledged.

**DATED THIS 4<sup>TH</sup> DAY OF SEPTEMBER 2002.**

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**ABDUL KARIM FUNNAH**

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## **DEDICATION**

This dissertation is dedicated to my family, the Funnahs, for their endless support and encouragement when I was at the verge of giving up. Thank You and may God bless you all.

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Finally I express my deepest gratitude to my mother, father, my daughter and my niece and nephew, my sisters and brother for their support, encouragement, patience and love, without which this work would not have been possible.

(VI)

**ABBREVIATIONS**

BCLR	BUTTERWORTHS CONSTITUTIONAL LAW REPORTS
CC	CONSTITUTIONAL COURT
CSVR	CENTRE FOR THE STUDY OF VIOLENCE AND RECONCILIATION
GA	GENERAL ASSEMBLY
ILO	INTERNATIONAL LABOR ORGANISATION
NWP	NORTH WEST PROVINCE
NWPCR	NORTH WEST PROVINCIAL CONFERENCE ON RACISM
OAU	ORGANISATION OF AFRICAN UNITY
RES	RESOLUTION
SA	SOUTH AFRICA
SAHRC	SOUTH AFRICAN HUMAN RIGHTS COMMISSION
SAJHR	SOUTH AFRICAN JOURNAL OF HUMAN RIGHTS
SCR	SUPREME COURT REPORTS
UN	UNITED NATIONS
USA	UNITED STATES OF AMERICA
UDHR	UNIVERSAL DECLARATION OF HUMAN RIGHTS
UNHCR	UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES
WCAR	WORLD CONFERENCE AGAINST RACISM

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**TABLE OF CASES**

Brink v Kitshoff 1996 (6) BCLR 752 (C); 1996 (4) SA 197 (CC)

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1997 (4) SA 1 (CC)

Prinsloo v Van der Linde and Another 1997 (3) SA 1012 (CC)

R v Big M Drug Mart Ltd (1985) 1 SCR 295

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Constitution of the Republic of South Africa Act No. 108 of 1996

Promotion of Equality and Prevention of Unfair Discrimination Act No. 4 of  
2000

**B. NATIONAL INSTRUMENTS**

National Conference on Racism, 2001

Provincial Conference Against Racism, 2001

**C. REGIONAL INSTRUMENTS**

The African Charter on Human and Peoples Rights, 1981

**D. INTERNATIONAL HUMAN RIGHTS INSTRUMENTS**

Declaration on Racism, Discrimination, Xenophobia and Related Intolerances  
Against Migrants and Trafficked Persons, Asia-Pacific NGO Meeting for the  
WCAR, Teheran, Iran 18<sup>th</sup> February 2001

General Assembly Resolution: 2200A (xxi) of 1966

International Convention on the Elimination of All Forms of Racial  
Discrimination, 1965

International Migration, Racism, Discrimination and Xenophobia, ILO,  
August 2001

The International Covenant on Economic, Social and Cultural Rights, 1966.

The International Covenant on Civil and Political Rights, 1966.

United Nations Charter

Universal Declaration of Human Rights, 1948

Declaration of the World Conference Against Racism, Racial Discrimination,  
Xenophobia and Other Related Intolerances, 2001

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### **ABSTRACT**

This dissertation assesses the impact of the Bill of Rights on discrimination and xenophobia and the search for equality, with particular reference to the North West Province.

It grapples with the social implications of discrimination against foreigners in a changing social order. In so doing, the dissertation examines a number of complex issues or factors that contribute to these two forms of discrimination, including: one's own race, the experiences of foreigners in the NWP in the context of increasing xenophobia and racial discrimination and post apartheid discourses about discrimination.

The major findings of this dissertation stem from the responses obtained from administered questionnaires, interviews and focussed informal and formal group discussions with affected individuals either as perpetrators or victims.

These findings are supplemented and informed by extensive library research, which included the study of reported cases and texts on the two forms of discrimination.

## CHAPTER ONE: INTRODUCTION.

### 1.0. Statements of the problem.

This dissertation assesses the impact of the South African Bill of Rights on discrimination and xenophobia and on the search for equality, with particular reference to the North-West Province. It seeks to understand the nature and dynamics of discrimination and Xenophobia, almost seven years after the birth of the “new” South Africa.

It is common cause that South Africa’s colonial and apartheid legacies left a triple curse of institutionalized racism, domination and patriarchy. Apartheid was not only the most glaring affront of basic human dignity, but it was the most brutal and unacceptable form of racial discrimination, an inevitable crime against humanity. The stark contrast between the past and the present has been adequately captured in the ringing and trenchant words of the late Chief Justice Mahommed (as he then was)

‘the past institutionalized and legitimized racism...  
was redolent with statutes which assaulted the human  
dignity of persons on the grounds of race and colour alone.’<sup>1</sup>

The past also accepted and institutionalized unfair discrimination against women and persons of colour, it permitted degrading treatment of persons.

The present is based on certain constitutional values, chief among them being non-racialism and non-sexism; the achievement of equality and the advancement of human rights and freedom. In addition the constitution enshrines the basic human right to equality and freedom from unfair discrimination. It also imposes a

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<sup>1</sup> Mahomed J in S v Makwanyane, 1995 3 SA 391.

duty to promote the achievement of equality through the enactment of the Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000.

The Republic of South Africa also played host to the World Conference to Combat Racism, Racial Discrimination, Xenophobia and Other Related Intolerance from 31<sup>st</sup> August to 8<sup>th</sup> September 2001. In the North-West Province, a Provincial Conference on Racism was held between 23<sup>rd</sup>-25<sup>th</sup> May 2001. These conferences resolved to combat all these forms of discrimination.

Against this profound background against racism, racial discrimination, xenophobia and other related intolerances, this dissertation seeks to determine how far the people of North West have come on the road to eradicating all forms of racial discrimination and xenophobia.

### **1.1. Aims and objectives of the study.**

In stark contrast the Constitution expresses in its preamble the need for a new order, in which there is equality between people of all races.<sup>2</sup>

The study therefore seeks to:



- Investigate the nature and dynamics of discrimination (racial and xenophobia) to the society of the North West Province, in particular the Mmabatho area but not limited to this area.
- Examine the prevalence of discrimination (racial and xenophobia) in the Mmabatho society.

Due to constraints of time and space it has not been possible to extend the geographical scope of the study to the whole of the North West Province.

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<sup>2</sup> Act 108 of 1996.

## 1.2. Rationale of the study.

The Republic of South Africa is committed to equality. This is reflected in several places in the Constitution. First, Section 1 of the Constitution states:

The Republic of South Africa is one, sovereign, democratic state founded on the following values:

- (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.

The main substantive provision for equality is provided for under Section 9 of the constitution. Section 9 reads as follows:

- (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
- (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
- (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3).

National legislation must be enacted to prevent or prohibit unfair discrimination.

- (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

It was not until the first democratic elections in 1994 that basic human rights included in the Interim Constitution became real.<sup>3</sup> According to the late Mohamed, the South African Constitution retains from the past only what is defensible and represents a decisive break from, and ringing rejection of, that part of the past which is disgracefully racist, authoritarian, insular, and repressive, and a vigorous identification with and a commitment to a democratic, universalistic, caring ethos expressly articulated in the Constitution.<sup>4</sup>

The legal issues surrounding South Africa's discriminatory problems remains a continuing process.

### 1.3. Scope of the Study.

Chapter one deals with introductory aspects, the aims and objectives of the study, its rationale, methodology, scope and limitation of the study.

Chapter two introduces the concept of equality in the South African context. A theoretical perspective will be used together with a review of literature (national and international) on the topic and a case study of affected parties.

Chapter three will examine the data collected and attempt to arrive at the empirical findings of the study.

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<sup>3</sup> Chapter 3 of the Interim Constitution of South Africa Act 200 of 1993.

<sup>4</sup> Makwanyane Ibid., n.1 at P 393.

Chapter four will examine and discuss the main findings against the existing literature and the personal experience of the writer and affected parties.

Chapter 5 consists of the summary, conclusions and recommendations.

#### **1.4. Methodology.**

The researcher has used library research involving reading and analysis of constitutional and legal and materials mainly cases.

In order to fill in the gaps, the author also carried out an empirical survey concerned with an attitudinal aspect.

#### **1.5. Data analysis.**

The findings of the study are presented by descriptive statistics and the information is be presented by the use of histograms.

#### **1.6. Major concepts defined.**

It is instructive or useful to define the major concepts used in this dissertation. The concept of equality will be our point of departure because it forms the core of the dissertation. Reference will also be made to the writings of philosophers on the concept of equality, because the writings of these authors have influenced the constitutional framework of South Africa. Reference will also be made to statutory requirements for equality. The concept of Ubuntu (customary values) will also be alluded to.

### 1.6.1. Equality.

Man is not an island. Man is a social being in the sense that he/she interacts with others. This interaction is meant to be peaceful. For him to interact with others on equal footing there must be equality between the actors.

In my view equality entails not just the equal enjoyment of opportunities, resources and the respect and love of one another but equality entails fairness.

In a constitutional democracy like South Africa, laws must apply equally and in the equal application of such laws, there will be an envisaged chance of fairness. Equality then takes up two different viewpoints. First, a formal equal treatment of all and secondly the active equalization of unequal facts and circumstances.<sup>5</sup>

As regards the first aspect, equivalent facts and circumstances are treated equally without regard to the individual or institution. In the second aspect, individual circumstances are relevant to the achievement of equality.<sup>6</sup>

### 1.6.2. Formal and Substantive Equality.

In the interpretation of the right to equality, there are two approaches used namely formal and substantive approaches. Formal equality is a principle of equal treatment, individuals who are alike should be treated alike, according to their characteristics rather than stereotype assumptions made about them.<sup>7</sup>

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<sup>5</sup> South African Human Rights Commission Report, August 2000.

<sup>6</sup> Ibid, n.5 at P16.

<sup>7</sup> Katherine T. Bartlet and Angela Harris, Gender and Law: Theory, Doctrine, Commentary, 101-102 (1998).

### **1.6.2.1. Formal Equality.**

It is a principle that can be applied either to a single individual, whose right to be treated on his or her own merits can be viewed as a right of individual autonomy, or to a group, who are members of other, similarly situated groups. What makes an issue one of formal equality is that the claim is limited to treatment in relation to another similarly situated individual or group and does not extend beyond same-treatment claims to any demand for some particular, substantive treatment.

Formal equality applies to sex-based classifications that discriminate against men, as well as those that discriminate against women. In formal equality terms, the goal is equal treatment for all, not just women.<sup>8</sup> Extending formal equality principles to rules that discriminate against men, or favour women, might also be justified on the grounds that rules that appear to benefit women instead promote attitudes and exceptions about women, including their dependency or status as victims, that disadvantaged them across a wide spectrum of social contexts.

Those who are of this view may favour formal equality as a strategy, but insofar as their choice of principle is based on its woman-centered results or outcomes, they already have their foot in the door of substantive equality, examined in the next part of this [unit] 1.6.2.2.

The dignity of man is the central point of reference for the ideal of equality, it is however noted that in the achievement of true fairness, one might be subjected to differential treatment.<sup>9</sup> People in similar circumstances should be treated alike such that although man is a social being, man should be classified, in whatever form, in order to achieve equality and fairness. For example, a man earning a substantial wage cannot be taxed the same as a man earning a minimal wage, equality maybe achieved but there will be no fairness.

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<sup>8</sup> Bartlet Ibid, n.7 at P2.

<sup>9</sup> R v Big M Drug Mart Ltd 1985 SCR 295 at 347.

The rationale here is that if two persons with the same skills and qualifications apply for a job which requires those skills and qualifications they must be equally or fairly treated because the notion of equality means that their skills and experience must be equally considered and the one with the better skill or more experience must be preferred. In so doing the less skilled or experienced will not be discriminated against because unequals cannot be treated equally.

If they have the same skills and experience then other factors, such as who applied first may be considered.<sup>10</sup> Physical differences and psychological differences should not be facts with legal reference affecting human rights, consequential achievement of equality and fairness.<sup>11</sup> On the contrary, honour, in appointing police officers/peace keepers, it is imperative that stature, muscular strength and agility are relevant. With respect to appointing employees whose activities will require special and cultural qualifications, appropriate mental differences should be given legal consequences. Thus human beings may be treated unequally with regards to the diversity that injustice should be taken into account.

This however gives rise in practice to many problems. One problem is whether certain differences should or should not, be relevant to the law, and consequently be sources of legal inequalities.<sup>12</sup> This is however, a problem, which cannot, generally be solved but one which is crying out for a solution.

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<sup>10</sup> Dorsey G, Equality and Freedom: International and Comparative Jurisprudence, Dobs Ferry, NY:Oceana, Vol. 1, 17-18, 1977.

<sup>11</sup> Claire L' Henreux-Dube J, "Making a difference: The pursuit of Equality and a Compassionate Justice", 1997 13 SAJHR 1330.

<sup>12</sup> Henreux-Dube Ibid, n.11 at P17.

Section 1 (ix) of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 defines equality as including the:<sup>13</sup>

Full and equal enjoyment of rights and freedoms as contemplated in the constitution.<sup>14</sup>

The Equality Act was enacted in terms of Section 9 of the Constitution. The Act seeks to give effect to Section 9 of the Constitution. The Act provides a framework for the dual task of achieving equality through.<sup>15</sup>

- (a) The prohibition of specific conduct that constitutes unfair discrimination and,
- (b) Provisions for active measures to promote equality.

The framers of the Act were mindful of the historical legacy of systematic inequality, particularly relating to race and gender that pervaded virtually all aspects of South African life. The Act seeks to address this inequality. This aspiration is set out in the preamble to the Act, which may be paraphrased as follows:

- (a) The consolidation of democracy in our country requires the eradication of social and economic inequalities, those that are systematic in nature, which were generated in our history by colonialism, apartheid and patriarchy, and which brought pain and suffering to the great majority of our people.
- (b) Although significant progress has been made in restructuring and transforming our society and its institutions, systematic inequalities and unfair discrimination remain deeply embedded

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<sup>13</sup> Act 4 of 2000.

<sup>14</sup> Section 2, Constitution of the Republic of South Africa, Act 108 of 1996.

<sup>15</sup> Bench Book For Equality Courts, Judicial Service Commission and Magistrates Commission, 2002.

in social structures, practices and attitudes, undermining the aspirations of our constitutional democracy.

- (c) The basis for progressively redressing these conditions lies in the Constitution which amongst others, upholds the value of human dignity, equality, freedom and social justice in a united, non-racial and non-sexist society, where all may flourish.

In seeking to achieve equality, the Act aims to redress disadvantages and to affirm diversity. South Africa's rich diversity that flows from the many positive sources of differences amongst people, including culture, religion, language, race and ethnicity. International documents also provide for equality.

The UDHR provides that:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.<sup>16</sup>

This article thus defines the basic assumptions of the Declaration:

- i. That the right to liberty and equality is man's birthright and cannot be alienated.
- ii. That because man is a rational and normal being he is different from other creatures on earth and therefore entitled to certain rights and freedoms which other creatures do not enjoy.

Article 2, which sets out the basic principle of equality and non-discrimination as regards the enjoyment of human rights and fundamental freedoms, forbids distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>17</sup>

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<sup>16</sup> Article 1, UDHR 1948.

<sup>17</sup> UDHR Ibid, n.16 at P11.

The achievement of formal legal equality has had a very limited impact on the actual social and economic equality of persons and groups.<sup>18</sup> It has also failed to result in any visible reduction in systematic patterns of inequality.<sup>19</sup> It has only tended to benefit those members of previously disadvantaged groups that have shared a similar social and economic status to members of disadvantaged groups<sup>20</sup> For example, white middle class women and black middle class men have enjoyed some benefits from identical legal treatment under discrimination laws, especially in terms of access to employment, educational institutions and economic opportunities.

#### **1.6.2.2. Substantive Equality.**

While formal equality judges, among others, the form of a rule, requiring that the rule treats women and men, black and white, on the same terms without special barriers or favours on account of their sex or race, substantive equality looks to a rule's results or effects.<sup>21</sup>

Formal equality often does not produce equal results because of significant differences in the characteristics and circumstances of women and men, blacks and whites. The realization of the limitations of formal equality has seen a movement towards 'substantive equality.'

Sometimes, in order to treat people equally, we need to treat them differently, especially where a group has historically been disadvantaged. This approach recognizes that formal equality is not enough and that we need to ensure substantive equality. It recognizes that discrimination can be so embedded in existing structures and practices that it is systemic. There is a need to do more

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<sup>18</sup> UDHR *Ibid.*, n.16 at P12.

<sup>19</sup> UDHR *Ibid.*, n. 16 at P 13.

<sup>20</sup> UDHR *Ibid.*, n.16 at P 13.

<sup>21</sup> Barlet, *opcit.*, n.7 at P 6.

than just determine whether the law is applied equally, we need to look at the law itself to see whether it treats individuals as individuals.

Determining what differences should be taken into account and in what ways, in short, what is fair, is not always an easy matter. Thus substantive equality is not one theory but several theories, reflecting multiple types and sources of difference and a number of alternative or overlapping substantive ideals.<sup>22</sup>

Substantive equality does not only look into the form of a rule that purports to effect equality. It requires the examination of social and economic circumstances of groups and individuals in order to ensure equality of the outcome; substantive equality is complex and not based on abstract, superficial concepts.<sup>23</sup>

Treating all people the same is not necessarily equality. Treating everyone the same can be discriminatory and to eliminate that discrimination we may have to recognize that groups are different. Discriminatory intent is not required. What is important is the impact of the law on the group concerned.

The Constitutional Court of South Africa has linked its understanding of substantive equality with the need to address and remedy South Africa's history of deep racial inequality and other forms of systematic discrimination.

In National Council of Gay and Lesbian Equality v Minister of Justice,<sup>24</sup> the Constitutional Court agreed that equality has a remedial and restitutionary purpose. Ackerman J states:

[I]t is necessary to comment on the nature of substantive equality, a contested expression which is not found in either of our Constitutions. Particularly in a country such as South Africa, persons belonging to certain categories have suffered considerable unfair discrimination in the past. It is insufficient for the Constitution merely to ensure, through its Bill of Rights,

<sup>22</sup> Act 108 of 1996 *Ibid*, n.2 at p 15.

<sup>23</sup> UDHR, *ibid* n.18 at P7-8.

<sup>24</sup> 1998 12 BCLR 1517.



that statutory provisions which have caused such unfair discrimination in the past are eliminated Past unfair discrimination frequently has ongoing negative consequences, the continuation of which is not halted immediately when the initial causes thereof are eliminated, and unless remedied, may continue for a substantial time and even indefinitely. Like justice, equality delayed is equality denied.<sup>25</sup>

Ackerman J observed that the right to equality should aim at redressing the past patterns of disadvantages and discrimination.<sup>26</sup>

Substantive equality is therefore remedial and restitutionary in nature, in that it tries to correct the imbalances of the past and to protect vulnerable groups. Indeed, sometimes, the greatest discrimination can lie in treating things that are different as though they were exactly alike.

### 1.6.3. The concept of Ubuntu.

One of the traditional African values is Ubuntu.<sup>27</sup> The values spoken of seek to promote the human good, mutual respect and fairness. These values have found their way into our constitutional thinking and influence what we conceive as equality.

The Constitutional Court, itself, has alluded to the importance of Ubuntu. In Makwanyane and Another, Langa J (as he then was) stated:<sup>28</sup>

An outstanding feature of Ubuntu in a community sense is the value it puts on life and human dignity. the dominant theme of the culture is that the life of another person is at least as valuable as one's own respect, for the dignity of every person is

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<sup>25</sup> Ibid, n.24 at P 61.

<sup>26</sup> National Council of Gay and Lesbian Equality, opcit, n.24 at P 1523.

<sup>27</sup> Khumalo, J.A, The Equality Clause In the South African Constitution: A Comparative Study, 1998, LLM Student Dissertation, University of North West, (unpublished).

<sup>28</sup> Langa J in S v Makwanyane, 1995 3 SA 391.

integral to this concept. Treatment that is cruel, inhuman or degrading is bereft of Ubuntu.

In the same case Mokgoro J expressed the same values, she stated:

Ubuntu translates an “humanness”. In its fundamental sense it translates as “personhood” and “morality”. metaphorically it expresses itself in umuntu ngumuntu ngabantu,” describing the importance of group solidarity on survival issues.<sup>29</sup>

#### **1.6.4. Discrimination.**

In the context of the constitutional prohibition of discrimination, the word means different treatment of persons or groups of persons in an equal or comparable situation.<sup>30</sup> In this classical meaning, the prohibition of discrimination is a negative way of issuing an order for equality.

It is obvious that this kind of definition is too abstract to be of any real help for a concrete case where it is doubtful whether or not a certain practice constitutes discrimination. Since the concept of equality has in itself no material meaning at all, the definition given above is hardly more than another way of putting the same question.

As a legal term the word “discrimination” first appeared in the USA.<sup>31</sup> Nowadays, the word discrimination is enjoying something of a vogue and we find it used in several different fields of international law.

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<sup>29</sup> Mokgoro J in S v Makwanyane, 1995 3 SA 391.

<sup>30</sup> Sunderberg-Weitman, B, Discrimination on Grounds of Nationality, Amsterdam, Northern Holland Publishing Company, 1977.

<sup>31</sup> Sunderberg-Wietman Ibid, n.30 at P 15.

Very often, we find the word discrimination used in order to establish the breach of an obligation to grant equality in treatment. There are three different types of obligations to that effect.<sup>32</sup>

I will deal with the last of these obligations. The obligation spoken of here is the standard of "National Treatment". The standard of National Treatment means that a state undertakes to grant to the nationals of some other state the same treatment as it gives its own subjects.<sup>33</sup> It should be noted that this type of obligation has, in itself no material meaning. All that is granted is equality in relation to a standard, which mostly is defined, only in the abstract form.

When a state or any of its nationals fails to fulfill an obligation, which results from this obligation, the breach is often labelled discrimination. The discrimination therefore stands for the breach of a rule, which, in a positive way, prescribes equality of treatment.<sup>34</sup>

In Nyamakazi v President of Bophuthatswana,<sup>35</sup> which involved the discrimination of non-citizens and the violation of their fundamental rights as contained in Section 15 of the Constitution of Bophuthatswana, Act 18 of 1977 (B), Friedman J as he then was stated:

The wide prohibitions imposed on aliens are in direct conflict with, and are against the spirit of, the preamble to the Constitution.<sup>36</sup>

The preamble to the Bophuthatswana Constitution stated:<sup>37</sup>

(W) here we shall always seek our future destiny in closer constitutional and political unity with other people and Governments.

<sup>32</sup> Sunderburg-Wietman Ibid, n.31 at P 21.

<sup>33</sup> Sunderburg-Wietman Ibid, n.32 at P 23.

<sup>34</sup> Sunderburg-Wietman Ibid, n.33 at P 24.

<sup>35</sup> 1992 4 SA 540.

<sup>36</sup> Nyamakazi Ibid, n.35 at P 584 par C.

<sup>37</sup> Sunderburg-Wietman, opcit, n.2 at P 43.

Section 15 reads:

Enactments which are discriminatory, or which classify groups or classes for special treatment, must be strictly construed, and may only be justified on the basis of a compelling state or national interest, which must be proved.

The Bophuthatswana Constitution excluded discrimination based on 'origin' therefore, the equal protection clause, in the Constitution of Bophuthatswana, did not include nationality or citizenship in the list of features that may not serve as a criterion for classification. Consequently Section 9 did not include differentiation in respect of the apportionment of rights and freedoms between citizens and non-citizens.

Section 9 stated:

All people shall be equal before the law, and no one may because of his sex, his descent, his race, his language, his origin or his religious belief be favored or prejudiced.

The clear language of Section 9 indicated beyond question that this fundamental right applied to all people. The phrase 'all people' means, *inter alia*, 'the entire number of, without exception'.<sup>38</sup> Clearly aliens were included. As stated herein, the provision of Section 9 contained no limitation and meant the equal application of the law to all people.

Section 9(3) and (4) of the Constitution prohibits unfair discrimination both vertically and horizontally on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, etc.<sup>39</sup>

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<sup>38</sup> The Shorter Oxford English Dictionary, 3<sup>rd</sup> ed. vol. 1 at 47.

<sup>39</sup> Act 108 of 1996.

The Promotion of Equality and Prevention of Unfair Discrimination Act defines discrimination as:<sup>40</sup>

Any act or omission, including a policy, law, rule, practice, condition, or situation which directly or indirectly:

- (a) Imposes burdens, obligations or disadvantages on; or
- (b) Withholds benefits, opportunities or advantages from, any person on one or more of the prohibited grounds.

In Prinsloo v Van der Linde,<sup>41</sup> the Constitutional Court defined unfair discrimination as:

Treating people differently in a way which impairs their fundamental dignity as human beings, who are inherently equal in dignity”

In Harksen v Lane,<sup>42</sup> it was decided that if discrimination was not based on a specified ground, then its existence would depend on whether the ground was “based on attributes and characteristics which had the potential of impairing the fundamental dignity of persons as human beings or to affect them adversely in a comparable serious manner.

It then appears, from this decision that the common ground is that both are related to attributes or characteristics that impact negatively on human dignity. The only difference is that discrimination based on the listed grounds need to be proved while discrimination based on analogous grounds must be proved as affecting a person’s dignity.<sup>43</sup>

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<sup>40</sup> Act No 4 of 2000, Section 1 (viii).

<sup>41</sup> 1997 3 SA 1012 par 31.

<sup>42</sup> 1998 SA 300 (CC), 1997 11 BCLR (CC) par 53.

<sup>43</sup> Opcit, n.35 at P 1489 par 46.

Human dignity therefore plays an important role in the interpretation of “unfair discrimination”. It provides the basic requirements for the determination of what amounts to unfair discrimination.

Goldstone J in President of the Republic of South Africa v Hugo, stated: <sup>44</sup>

At the heart of the prohibition of unfair discrimination lies the recognition that the purpose of the constitution is to establish a society in which everyone is accorded equal dignity regardless of his membership of a particular group.<sup>45</sup>

Paying attention to the context of alleged unfair discrimination means looking at the historical, social and economic conditions of groups and individuals in order to determine whether there has been unfair discrimination. It is notable that under international law there is no distinction between ‘fair’ and ‘unfair discrimination.’

Mary Robinson, the outgoing United Nations High Commissioner for Human Rights and also the Secretary General of the World Conference against Racism stated:

Discrimination is the very antithesis of respect for human rights. It says that some are inferior and hence are not entitled to be included in the enjoyment of basic rights.<sup>46</sup>

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<sup>44</sup> 1997 6 BCLR 708 (CC); 1997 4 SA 1 (CC)

<sup>45</sup> Hugo Ibid, n.44 at P 728H-729B.

<sup>46</sup> Speech delivered by Mary Robinson at the opening of the World Conference Against Racism on, 18 June 2001.

### 1.6.5. Racial Discrimination.

Racial discrimination has been defined as an ideological construct that assigns a certain race and or ethnic group to a position of power over others on the basis of physical and cultural attributes, as well as economic wealth involving, hierarchical relations where the superior race exercise domination and control over others.<sup>47</sup>

The International Convention on the Elimination of all Forms of Racial Discrimination, 1965, describes the term 'racial discrimination' as:<sup>48</sup>

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms, in the political, economic, social cultural or any other field of public life.

### 1.6.6. Xenophobia.

Xenos is Greek for stranger,<sup>49</sup> and Phobia for fear<sup>50</sup> so when we say xenophobia we are referring to fear of strangers, the other, unknown.

Xenophobia is also defined as describing attitudes, prejudices and behavior that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community or society.<sup>51</sup>

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<sup>47</sup> Declaration on Racism, Discrimination, Xenophobia and Related Intolerances against Migrants and Trafficked Persons. Asia-Pacific NGO meeting for the WCAR, Teheran, Iran. 18<sup>th</sup> February 2001.

<sup>48</sup> Article 1 (1) of the International Convention on the Elimination of All Forms of Racial Discrimination, 1965.

<sup>49</sup> Article by Mujica Hugo, 'Xenophobia', [www.ivm.org.ar](http://www.ivm.org.ar)

<sup>50</sup> Hugo *Ibid*, n.49 at P 17.

<sup>51</sup> Hugo *Ibid*, n.50 at P 17.

## 1.7. Summary.

In this chapter, we have attempted to articulate the problem under investigation, state our aims and objectives as well as research methodology and data collection. We have explained the meanings of concepts such as equality, racial discrimination, xenophobia and the concept of Ubuntu.

In the next chapter it is proposed to discuss the constitutional protection of equality under the current South African Constitution.

**Chapter Two: Constitutional Protection of Equality In The Republic of South Africa.**

**2.0. Introduction.**

This chapter examines the history of equality vis-à-vis racism and xenophobia in South Africa. A brief glance into the literature reveals that the apartheid system encouraged separation of people of the country on racial grounds. This ultimately resulted in the depreciation of rights, e.g. coloureds were denied the right to vote, blacks were prevented from residing in areas reserved for whites.<sup>52</sup>

The 'old' South Africa had many oppressive laws governing every aspect of social, economic and political life.<sup>53</sup> Although these laws have been repealed with the advent of the 'new' South Africa, the status of racial minority groups and foreigners in South Africa still needs urgent review and adequate addressing. South Africa has one of the most sensitive constitutions in the world, yet one needs only to take a look at the country itself to realize that "the more things change, the more they stay the same."<sup>54</sup>

**2.1. The history of equality in South Africa: from settler colonialism to apartheid.**

The past, of course, needs little retelling. From the time the Dutch settlers first landed in 1652 and established farms, a system of segregation or apartheid based on colour was eminent.<sup>55</sup> Apartheid was not only the most glaring affront to basic human dignity of the black people, but it was the most brutal and unacceptable form of racial discrimination, an inevitable crime against humanity.<sup>56</sup>

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<sup>52</sup> Harris v Minister of The Interior, 1952 2 SA 428 (A).

<sup>53</sup> E.g. Groups Areas Act 33 of 1950.

<sup>54</sup> Dorsey, opcit n.10 at P 23.

<sup>55</sup> O'Regan K, Addressing The Legacy of The Past: Equality In The South African Constitution.

<sup>56</sup> Mbaol M.L.M, International and National Framework of Equality and Non Discrimination Legislation, University of North West, (Unpublished Mimeo).

The process of colonial dispossession accelerated in the nineteenth century where fierce and bitter wars were fought in the Eastern Cape and in Natal.<sup>57</sup> After the defeat of two independent Boer Republics in 1902, all of what is today South Africa fell under the rule of the British Empire.<sup>58</sup> The British Empire maintained in law and practice, racial discrimination. Inequalities and pass laws preventing African people from free movement within the country were introduced nationally early in the century.<sup>59</sup>

Poll and hut taxes, which forced subsistence farmers into the colonial economy to earn cash, also date way back into the colonial era. The intention of the government at this stage was to further the interests of the white community at the expense of the African, Colored and Asian communities.<sup>60</sup>

The government enacted a multitude of legislations which amongst others provided for racial classification, forbade mixed marriages and inter-racial sexual intercourse, provided for separate and unequal education systems, separate and unequal hospitals, public transport and other civic amenities, racially segregated urban areas and a racially segregated labour market.<sup>61</sup>

The legacy of both the colonial era and the years of apartheid is a bitter one. We were a deeply unequal society. Mohammed J, in S v Makwanyane & Another, stated that:

“ The past institutionalized and legitimized racism.”<sup>62</sup>

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<sup>57</sup> O'Regan, opcit n.55 at P 17.

<sup>58</sup> O'Regan ibid, n.57 at P 19. Idem p 19.

<sup>59</sup> Dorsey, opcit, n.54 at P 27.

<sup>60</sup> O'Regan ibid, n.59 at P31.

<sup>61</sup> Separate Amenities Act No. 49 of 1953.

<sup>62</sup> Henreux-Dube, opcit, n.11 at P 487.

The Interim Constitution, 1993 expressed the need for a new order in which there would be equality between all people. The past was notorious with statements, which assaulted the human dignity of persons on the grounds of race and colour.<sup>63</sup>

The past accepted, permitted, perpetuated and institutionalized unfair discrimination against persons of colour and different races. On the other hand section 8 and the post-amble of the Interim Constitution, Act 200 of 1993, seeks to articulate an ethos, which not only rejects its rationale but unmistakably recognizes the clear justification for the reversal of the accumulated legacy of such discrimination. The past repressed the freedoms of expression, assembly, association and movement; it also limited the right to vote.<sup>64</sup>

What the Interim Constitution expressly aspired to do was to provide a transition from these grossly unaccepted features of the past to a contrasting future founded on human rights and democracy irrespective of colour, race, class, belief or sex.

The post-amble to the Interim Constitution gave expression to the new ethos of the nation by a commitment to 'open a new chapter in the history of South Africa' by articulating a need for ubuntu.<sup>65</sup>

'The need for ubuntu' expresses the ethos of an instinctive capacity for the enjoyment of love towards our fellow men and women and the joy and fulfillment involved in recognizing their innate humanity.<sup>66</sup>

It is against this historical background and ethos that the need for equality at all levels must be determined. The Bill of Rights in the South African Constitution is the product of this tragic history.<sup>67</sup>

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<sup>63</sup> Opcit, n.1 at P 487.

<sup>64</sup> O'Regan Ibid, n.63 at P 488.

<sup>65</sup> O'Regan Ibid, n.64 at P 492.

<sup>66</sup> O'Regan Ibid, n.65 at P 493.

<sup>67</sup> Act 108 of 1996 Opcit, n.2 at Chapter 2.

The Interim Constitution was based on “values” that underpin an open and democratic society to rank equality as one of the leading fundamental rights.<sup>68</sup> The commitment to equality was at the heart of the South African Interim Constitution.<sup>69</sup>

Equality underlies the spirit of an entire democratic dispensation.<sup>70</sup> Indeed, the Interim Constitution created a non-racial, non-sexist democracy. The final Constitution has retained much of what was in the Interim Constitution.

Equality, under the 1996 constitution is a moral and legal issue.<sup>71</sup> Section 9 of the South African Constitution, 1996 provides for the equality clause. Carpenter emphasizes the point that equality is arguably the “Grund norm of the new constitutional order”.<sup>72</sup>

Equality outranks even freedom and human dignity. It is instructive here, too, that the emphasis of Section 9 is not a guideline or recommendations but rather a provision which imposes a duty on the judiciary to find out if legislative, executive and administrative bodies have respected the equality of all individuals guaranteed in the sub section.<sup>73</sup>

Section 9 (1) provides the broad promise of equality before the law and the right to equal protection and benefit of the law.

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<sup>68</sup> Act 108 of 1996 *Ibid*, n.67 at Section 39.

<sup>69</sup> President of the Republic of South Africa & Another v Hugo, 1974 SA 1 (CC); 1997 6 BCLR 708 (CC)  
Per Kriegler J.

<sup>70</sup> Devinish G. E, A Commentary on The South African Bill of Rights, Butterworths, Durban 1999.

<sup>71</sup> Devinish, *Ibid*, n.70 at P 37.

<sup>72</sup> Carpenter G, “Motives Inscribed on Our Social Public: Equality in “Brink v Kitshoff”,  
1997 13 SAJHR 304.

<sup>73</sup> Devinish Opcit, n.71 at P 43.

## 2.2. Fair and unfair discrimination

Direct forms of discrimination are when a person is prejudiced merely on the grounds listed in sub-section 3 whereas indirect discrimination occurs when a person is prejudiced by actions or policies which have been designed apparently to achieve a neutral objective which is not necessarily or intentionally meant to discriminate against one.<sup>74</sup>

In Harksen v Lane,<sup>75</sup> the court stated that differentiation on grounds that are analogous to those listed in sub-section 3 constitute discrimination. A classification, which is unfair in one context, may not necessarily be unfair in a different context.<sup>76</sup>

In interpreting the clause on equality, Section 39 of the Constitution must not be lost sight of. Sections 39 (1) and (2) read as follows:

- (1) When interpreting the Bill of Rights, a court, tribunal or forum
  - (a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
  - (b) must consider international law; and
  - (c) may consider foreign law
- (2) When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects the Bill of Rights.



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<sup>74</sup> Devinish Ibid, n.73 at P 37.

<sup>75</sup> 1997 11 BCLR 1489 (CC)

<sup>76</sup> Devinish Opcit, n.74 at P 48.

In City Council of Pretoria v Walker,<sup>77</sup> the court held that differentiation within a structure that is rationally related to the equality of service and type of circumstances of the user was permissible and did not amount to unfair discrimination.

The court had to decide whether the imposition of a uniform charge for services in townships (black residential areas under apartheid) and a metered rate for previously white urban areas, was unfair discrimination.

The Court examined the history of racial inequalities affecting groups in urban areas, the political and economic circumstances surrounding the imposition of a flat rate in the townships and the position of black people as a disadvantaged group and of white people as a political, but not economic, minority. It looked at the real-life conditions and the historical and present circumstances of the groups in deciding whether there was unfair discrimination. The court found that the imposition of flat rate was fair in the circumstances.

Section 4 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 prohibits unfair discrimination.<sup>78</sup> Section 4 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 forms an integral part of this paper because it prohibits unfair discrimination.

This piece of legislation was enacted to give effect to the provisions of section 9 of the Constitution.

In Brink v Kitshoff, O'Regan J, found that the equality clause served two primary purposes.<sup>79</sup>

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<sup>77</sup> 1998 3 BCLR 257 (CC).

<sup>78</sup> Act 4 of 2000 Opcit, n.13, Section 4

<sup>79</sup> 1996 6 BCLR 752 (C); 1996 4 SA 197 (CC).

First, it is meant to proscribe systematic patterns of unfair discrimination against members of disfavoured groups such as blacks and foreigners. Secondly it was to redress the effects of subordination and inequality due to the South African history of apartheid.<sup>80</sup>

On the authority of the precedent in *Brink*, the court in *Harksen* reaffirmed the rule that discrimination against people who were members of disfavoured groups amounted to unfair discrimination.<sup>81</sup> Throughout its equality analysis, the South African Constitutional Court has adhered to restitutive equality.

The opinion in *Brink* through to the National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others,<sup>82</sup> are replete with the courts avowed preferences for substantive equality.

The court in that case<sup>83</sup> confirmed that in the final analysis, it is the impact of the discrimination on the complainant or the members of the affected group that is the determining factor regarding the unfairness of the discrimination.<sup>84</sup>

The Constitutional Court has therefore continuously maintained the view that the purposes behind the equality guarantee are to deconstruct patterns of historical discrimination as well as to redress the effects of such discrimination.<sup>85</sup>

For this reason the court may strike down any differential treatment if the impact is to disadvantage a person in a manner that perpetuates the kind of injustice which the equality clause is aimed at preventing.

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<sup>80</sup> *Ibid*, n.79 at Par 42.

<sup>81</sup> See also: Mireku O, Constitutional Review In Federalized Systems of Government: A Comparison of Germany and South Africa; Zugl, Hanover University, 1999.

<sup>82</sup> *Opcit*, n.24 at P 1559.

<sup>83</sup> *Ibid*, n.82 at P 1559.

<sup>84</sup> Gay and Lesbian, *opcit*, pars 19 and 26.

<sup>85</sup> *Ibid*, n. 84.

### **2.3. International studies of equality legislation.**

South Africa's policy of apartheid had always been under scrutiny by the international community. In 1946 her policy of apartheid came under the scrutiny of the United Nations.<sup>86</sup>

In that very same year India lodged a complaint against the then government of South Africa regarding legislation by the South African Government, which discriminated against South Africans of Indian Origin.<sup>87</sup>

#### **2.3.1. The equality of individuals under the United Nations Charter.**

During the period preceding World War II, the basic defects and inadequacies of the League minorities' system had become gradually more evident. It was considered by many to be based purely on political expediency rather than on any real concern for the protection of human rights, and to be discriminatory in two senses.<sup>88</sup> It was thought to offend the principle of equality of states since the obligation developed on some states only.

Secondly, only "minorities" were to have their basic rights guaranteed and as such most states found this unsatisfactory, this was demonstrated in the League's Assembly debates, but apart from these, the activities of several other international organizations and the opinions of writers showed a growing preference for the notion that certain basic rights should be enjoyed by all person's everywhere, without distinction.<sup>89</sup> Most important was the right to equality.

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<sup>86</sup> Mckean. W, Equality And Discrimination Under International Law, Clarendon Press, Oxford, 1983.

<sup>87</sup> Mckean, ibid, n.86 at P 143.

<sup>88</sup> Mckean Ibid, n.86 at P 156.

<sup>89</sup> Edson.P, The Story Behind the Human Rights Plan, San Francisco News, 16 May 1945.

The purposes of the UN are listed in Article 1 of the Charter, which reads as follows:<sup>90</sup>

To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.

The emphasis here is clearly on equality or non-discrimination reflected in the words “without distinction as to race, sex, language or religion.”

Under Article 53 (c) the UN was to promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion”, and members were to have an obligation under Article 56,”

To take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

### **2.3.2. The Universal Declaration of Human Rights, 1948.**

The most important modern document regarding human rights is without doubt the Universal Declaration of Human Rights, proclaimed by the General Assembly of the UN on 10 December 1948.

The Universal Declaration of Human Rights reinforces the basic purpose of the UN Charter. It is notable here that at the time the UDHR was adopted; the stated aim was that the Declaration would be;

“A common standard of achievement for all peoples and all nations...”

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<sup>90</sup> United Nations Charter Article 3 sub Article 3.

It is thus a yardstick by which states can measure the degree of respect for, and compliance with, international human rights instruments.

The Universal Declaration of Human Rights was a result of the carnage brought by the systematic violation of human rights during World War II.<sup>91</sup> During that time people were exterminated in the name of perverse and racist ideologies.

The Bill then contained an unequivocal statement of principles of equality of rights of individuals. It proclaims that all human beings are born free and equal in dignity and rights.<sup>92</sup>

By this time the UN General Assembly had made reference to questions of discrimination and equality in several resolutions<sup>93</sup>, in particular, Resolution 103(1)<sup>94</sup> which declared that it was in the higher interests of humanity to put an end to religious and so-called racial persecution and discrimination and called on governments and responsible authorities to conform to the spirit of the UN Charter and to take the most prompt and energetic steps to that end.

The UDHR marked the first occasion on which the organized community had made a declaration of human rights and fundamental freedoms.

Article 1 of the UDHR, reads:

All human beings are born free and equal in dignity and rights, they are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

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<sup>91</sup> Mbao, *opcit*, n.56 at P 3.

<sup>92</sup> Article 1 of the UDHR.

<sup>93</sup> E.g. Res. 44(1) concerning the treatment of persons of Indian origin in South Africa; Res 56(1) concerning political rights of women; Res 96(1) concerning the crime of genocide.

<sup>94</sup> Res 44 (1) *Ibid*, n.94, 48<sup>th</sup> Plenary meeting of the GA (29 November 1946), UN doc. A\64\ add. 1, 200.

The article defines the basic assumptions of the Declaration, that is to say, that the right to liberty and equality is every one's birthright and cannot be alienated.<sup>95</sup>

Of importance too, are the provisions of Article 2, which sets out the basic principles of equality and non-discrimination as regards the enjoyment of human rights and fundamental freedoms; it reads as follows:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any limitation of sovereignty<sup>96</sup>.

It is clear that the article is aimed at non-discrimination and equality. Article 7 also provides for equality before the law and the equal protection of the law. The article reads as follows:

All are equal before the law and are entitled without any discrimination to equal protection of the law.

### **2.3.3. The Covenants on Human Rights, 1966.**

On 16 December 1965 the General Assembly approved resolutions adopting the International Covenant on Economic, Social and Cultural Rights and the

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<sup>95</sup> The Universal Declaration of Human Rights, 1948.

<sup>96</sup> UDHR Ibid, n. 96, Article 2.

International Covenant on Civil and Political Rights.<sup>97</sup> The two draft Covenants had been under consideration by the General Assembly since 1954.<sup>98</sup>

Article 3 in both Covenants reaffirms the equal rights of men and women to the enjoyment of all human rights. It is the duty of all states parties to make the principle of equality a reality.

#### **2.3.4. The International Convention on The Elimination of All forms of Racial Discrimination, 1965.**

In 1962 the General Assembly requested the Economic and Social Council to prepare a draft declaration and convention on the elimination of all forms of racial discrimination and on 20 November 1963 the General Assembly, proclaimed the UN Declaration on the Elimination of All Forms of Racial Discrimination, 1965.<sup>99</sup>

“Racial discrimination” is defined for the purposes of the Convention in Article 1(1) as:

Any distinction, exclusion, restriction, or preference,  
based on race, colour, descent or national or ethnic origin  
which has the purpose or effect of nullifying or impairing  
the recognition, enjoyment or exercise, on an equal  
footing, of human rights and fundamental freedoms  
in the political, economic, social, cultural or any  
other field of public life.

This definition clearly encapsulates discrimination as a denial of equality of dignity and rights before the law. Discrimination between human beings on the grounds of race, colour, or ethnic origin by a state, institution, group or individual

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<sup>97</sup> General Assembly Res: 2 200 A (xxi). The G/A unanimously adopted the Covenant on Economic, Social, and Cultural Rights, and that on Civil and Political Rights in 1966. See UN Yearbook 1966, 418. These instruments came into force on 3 January 1976, 23 March 1976 respectively.

<sup>98</sup> Mckean, *opcit*, n.87 at P 45.

<sup>99</sup> De Villiers *et alia*, Human Rights Documents that passed the way, Pretoria: HRSC Publishers (1992)

in matters of human rights and fundamental freedoms is condemned, as is the encouragement, advocacy, and support of such action by the State<sup>100</sup>.

The second paragraph of Article 2 is particularly important since it specifically provides that special measures may be taken in order to secure adequate development and protection of individuals belonging to certain racial groups, with the object of ensuring the full enjoyment by such individuals.<sup>101</sup> Of particular interest to the aspect of xenophobia, hate speech and all forms of intolerance and bigotry is the provision of Article 4: It reads as follows:

States parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any formation.

In essence Article 4 provides for the revision of laws and policies tending to create or perpetuate racial discrimination and for positive legislation to prohibit discrimination and measures to combat prejudice.

### **2.3.5. The African Charter on Human and Peoples' Rights, 1986.**

In the African Charter on Human and Peoples' Rights it is stated in the preamble that:

Freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples.

Article 2 provides for the enjoyment of rights and freedoms guaranteed in the Charter by all without distinction of any kind.

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<sup>100</sup> Article 1 & 2 of the Covenant.

<sup>101</sup> International Covenant on the Elimination of all Forms of Racial Discrimination *Ibid*, n.101, Article 2 (2).

Article 3 of the Charter reaffirms the provisions of other existing international covenants based generally on equality. It reads as follows:

Every individual shall be equal before the law.

### **2.3.6. World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2001.**

Human rights and the issue of discrimination and equality have come a long way in their development. The World Conference against Racism, held in Durban, South Africa is by no means an exception to the existing literature on discrimination and the search for equality not only on an international scale but also on a national level.

The WCAR in its declaration reaffirmed amongst others the commitment to the purposes and principles contained in the Charter of the UN and UDHR.<sup>102</sup> This in essence, means, that there is acknowledgement of the issues of discrimination and equality, amongst others and hence the need to reassure commitment to their eventual eradication.

The conference, has, in almost all its committees reaffirmed the definitions of equality and discrimination and the urgent need to guarantee equality within states.

The Committee on the Elimination of Racial Discrimination took into account the definitions of discrimination in the International Convention on the Elimination of Racial Discrimination<sup>103</sup>.

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<sup>102</sup> Declaration of the WCAR, Durban, South Africa 31 August to 8 September 2001.

<sup>103</sup> Note by the Secretary General on Human Rights: Review of Reports, Studies and other Documentations for the Preparatory Committee and the World Conference.

Discrimination and racism occur primarily because people are fearful of their differences or because they wish to preserve particular relations of power by exclusion or exploitation.

It is questionable as to whether or not this fear actually existed at the World Conference against Racism.

### **2.3.7. Racial Discrimination in the North West Province.**

Having discussed international trends and instruments dealing with discrimination, it is proposed to focus on the national situation in particular on the North West Province.

Belief in equality, the view that unless there is a reason for it, recognized as sufficient by some identifiable criterion, one man should not be preferred to another, is a deep-rooted principle in human thought<sup>104</sup>.

The NWP faces new challenges with the slow maturity of democracy. Racism today is complex, dynamic and creative in form shaped by both apartheid and the mechanisms of transition.

Racism is both overt and subliminal in the NWP.<sup>105</sup> Sometimes it is hard to distinguish the one from the other. Overt racism is in the face of the White farmer who shoots at black children crossing what he thinks of as his property, or in the face of the other white farmer who covers a black worker from top to toe in silver paint to make a point about what the farmer considers to be insubordination.<sup>106</sup>

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<sup>104</sup> Sir Hersch Lauterpacht, An International Bill of the Rights of Man, Columbia University Press, New York, 1945.

<sup>105</sup> Matshikiza J, Mail & Guardian May 25 to 31 2001.

<sup>106</sup> South African Human Rights Commission, August 2000.

Overt racism today is what only black people can feel in their day-to-day dealing with certain kinds of white people, dealings that are simultaneously both too brutal and too subtle to catalogue.

Subliminal racism is the way in which otherwise enlightened white intellectuals avoid the subject.<sup>107</sup> The Oxford dictionary defines ‘subliminal’ as below the threshold of sensation or consciousness’.<sup>108</sup> The implication for racism is that a racist idea may be held and acted on without conscious intention – even in the presence of anti-racist conscious beliefs.<sup>109</sup>

The first Provincial Conference on Racism was by no means an exception to the form of creative racism in the province.<sup>110</sup> Given the history of racism in the country, it was hoped that South Africans of all race groups would appreciate and avail themselves of this opportunity to share their experiences across the racial divide for the sake of better mutual understanding.

The conference actually, in all truth, brought to the fore, the existence of racism within the province. A very small number of white South Africans came to the conference. The absence of members of the white community sent a message to their black counterparts that they lacked interest and that the fight for a non-racial South Africa was left to the black people.

The conference clearly depicted that racism affected all South Africans, either as victims or as perpetrators. The absence of whites was also a clear sign of its existence in the province.

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<sup>107</sup> South African Human Rights Commission *Ibid*, n.106at P 52.

<sup>108</sup> Oxford Dictionary *Opcit*, n.38.

<sup>109</sup> It is noted that no legal document could be found expressing the concept of ‘subliminal racism’, that it is why it is in inverted commas, to express hesitation about reliance on the concept.

<sup>110</sup> 23-25 May 2001, Convention Center, Mafikeng.

The few whites that attended acknowledged their uncertainty about their role in the discussion. They even felt that they would be put on the spot to account for the sins of white people against black people in the province.<sup>111</sup>

The majority of submissions made either in writing or verbally revealed three main patterns.<sup>112</sup>

- First, and prevalent in the rural areas of the North-West, is racism in the form of violent attacks against farm workers.
- Second, prevalent in urban areas, is blatant discrimination of black people in institutions such as schools, universities, colleges and banks. White people have moved out of the suburbs that they used to dominate because of the influx of blacks in the neighborhood.
- Third, local people experienced hostility and negative sentiments towards Africans from the rest of the continent, viewing these (illegal) immigrants as usurpers of the already limited employment opportunities in South Africa.

Racism in the NWP is essentially a societal system based on the belief created over the years and inculcated in both black and white people that white people are superior to black people and that white people are more intelligent, competent, far-sighted, inventive, self-controlled, advanced, attractive, spiritually favored, morally good and so on.<sup>113</sup>

Racism results in race prejudice, racial stereotype and racial discrimination.<sup>114</sup>

Discussions during the conference were about the institutional and systematic understanding of racism rather than the fact of it.

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<sup>111</sup> Final Report, National Conference on Racism, 2001.

<sup>112</sup> Final Report, National Conference on Racism *Ibid*, n111 at P 21.

<sup>113</sup> Much more important is the racism inherent in the belief system of a society. Their actions are taken on the basis of common sense, reasoning, using common-sense knowledge of the world.

<sup>114</sup> SAHRC *Opcit*, n.106 at P 63.

The system of discrimination, which the North West Province has inherited, is inherently racist in that it is founded on certain core assumptions of value.<sup>115</sup>

The new dispensation seeks to correct and transform that and can only succeed to a limited extent. White people in the North West Province are not congenitally racist. Racism is a process of socialization.<sup>116</sup>

Perhaps the most publicized case of racial tension in the province was that involving Andrew Babeile, a school pupil in the town of Vryburg who had been involved in violent racial attacks on school premises.<sup>117</sup>

Racial tensions have been simmering in Vryburg schools and the town's police station. White teachers refused to teach black students mathematics and computer lessons, defying their constitutional right to equality and education.<sup>118</sup>

On February 27 1999 Andrew Babeile stabbed a fellow pupil, Christoffel Erasmus, in the neck with a pair of scissors.<sup>119</sup> Babeile had been surrounded by a group of white pupils outside the tuck shop.

They repeatedly called him "Kaffir". Babeile, small, victimized and volatile had a pair of scissors in his pocket. Suddenly he lunged, stabbing Erasmus. He was convicted in April 2001.<sup>120</sup>

The province as a whole has witnessed and felt accounts of inhuman treatment and racially motivated verbal assaults and physical attacks. These are some of the other cases of racism experienced in the province submitted at the conference.

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<sup>115</sup>Final Report, National Conference on Racism *Op cit*, n.111 at P 12.

<sup>116</sup>Final Report on Racism *Ibid*, n.115 at P 13.

<sup>117</sup>"Sunday Times", September 16, 2001.

<sup>118</sup>Section 9 and 29 of the South African Constitution, Act 108 of 1996.

<sup>119</sup>Provincial Conference *Op cit*, n110 at P 35.

<sup>120</sup>Provincial Conference *Ibid*, n.119 at P 35.

In Ottosdal, white nurses refused to bathe and feed black patients. Black nurses were passed over when it came to consideration for promotion, in favor of white nurses. A white man who disfigured a black man's face in Pampierstad was left to go free whilst his black victim was arrested and sentenced to 5 years imprisonment despite the attack on him being unjustified.<sup>121</sup>

In Wolmaransstad, a 15-year old boy was badly assaulted and was hospitalized for allegedly stealing books from the shop. The books were not found. In another incident in Loballeng, a black male was sentenced to 4 months in jail after a farmer claimed that he had stolen his lemons.<sup>122</sup>

The perpetrators in all these incidents have been whites whilst their victims were in most cases innocent, helpless blacks. At Rietvlei High School, as soon as black students were admitted, the school rules changed. White students only used the school facilities that were available for use by all students'. There were no black students on the student's representative committee and all communication was carried out in Afrikaans.<sup>123</sup>

In Delareyville and its surrounding areas a white medical practitioner allegedly physically assaulted an African female patient within his premises at the surgery.<sup>124</sup> In Jerrico, a deaf and dumb man lost his right ear and sustained injuries when dogs, while visiting his father attacked him.

The owner of the dogs, his father's boss, promised to pay compensation and to cover the medical bills. The injured man has not received such payment.<sup>125</sup>



<sup>121</sup> SAHRC Report on Provincial Consultative Process, May 2000.

<sup>122</sup> SAHRC *Ibid*, n.121 at P 24.

<sup>123</sup> SAHRC *Ibid*, n.122 at P 23.

<sup>124</sup> Invitation to the University of North West from the Mafikeng Local Municipality to March against racism in Delareyville, 04 September 2001.

<sup>125</sup> SAHRC *Op cit*, n.123 at P 23.

In Coligny Public Library, white patrons do not want to be served by a black librarian. A domestic worker in the same town said she had to wear plastic gloves when she worked in a white person's house. Her boss would ask her to wash in cold water and he would watch while she did so.<sup>126</sup>

In Taung, two white farmers were held hostage after they allegedly assaulted a farm worker. After this, the farm worker went missing and was later reported dead. Remains of a human body were found in the farmyard and the matter was reported to the police, but no arrests were made.<sup>127</sup>

At Orkney and Kanana police stations, black officers are refused transfers while their white colleagues' transfer regularly. Black officers are not allowed to use the kitchen stove and use separate utensils and toilet facilities while their white colleagues' patrol in cars, black police officers patrol on foot.<sup>128</sup>

Certainly the roots of this material division of society are to be found in the particular history of colonial and apartheid rule. Perhaps the most famous cases of racism in the province emanate from Ventersdorp, where black people experience racism on a daily basis.

Eugene Tereblanche, the leader of the AWB in the country, had assaulted a petrol attendant leaving him disabled; he is currently in jail.<sup>129</sup>

In Tarlton, a white man was accused of shooting and injuring minibus taxi passengers and instead he claimed to have been assaulted by blacks while in custody and that the assaults were racially motivated.<sup>130</sup>

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<sup>126</sup> SAHRC *Ibid*, n.125 at P 23.

<sup>127</sup> SAHRC *Ibid*, n.126 at p 25.

<sup>128</sup> SAHRC *Ibid*, n127 at P 26.

<sup>129</sup> "The Mail", 12 August 2000.

<sup>130</sup> Sowetan, Friday, January 18, 2002.

Race issues are so fundamental in the NWP society that they form almost an integral component of society. Some North Westerners believe that race is the primary determinant of human abilities and capacities.<sup>131</sup> Some behave as if racial differences produce inherent superiority in South African [whites]. In fact, such individuals respond to people of colour and whites differently merely because of race (or ethnicity).

Much of the attention of the Provincial Conference on Racism was focused on individual racist behavior.<sup>132</sup> However, just as individuals can act in racist ways, so can institutions.<sup>133</sup> From the reports and submissions made, it becomes evident that institutions could behave in ways that were overtly racist (i.e., specifically excluding people of colour from services) or inherently racist (i.e., adopting policies that while not specifically directed at excluding people of colour, nevertheless resulted in their exclusion).

Therefore, institutions can respond to people of colour and whites differently. Institutional behavior can injure people of colour, and, when it does, it is nonetheless racist in outcome if not in intent. Current racist ideology in the North West Province includes ideas and practices that endorse the notion that racial discrimination and prejudice no longer pose a significant problem.

It is argued that since the attainment of formal equality, the main racial problem in the NWP society is that blacks were demanding more than the basic provisions could provide for them.<sup>134</sup> Such arguments overlook or seek to deny the continuing patterns of racial inequality in our province and the country. At the apex of such views is the idea that even to discuss the question of racism is itself an act of racism.

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<sup>131</sup> From interviews conducted with ordinary members of the NWP society, in particular the !Mafkeng are, between May and December 2001.

<sup>132</sup> Final Report, National Conference on Racism *Opcit*, n.111 at P 26.

<sup>133</sup> This was evident from the submissions made at the conferences' working groups-participant observation.

<sup>134</sup> Final Report, National Conference on Racism *Opcit*, n.111 at P 23.

Much, then, remains to be done in the hope that historical and politically engaged discussions of race can continue in the province, and its societies to try and eradicate what seems to remain-the NWP's most intractable problem, *race*.

### **2.3.8. Xenophobia in the North West Province.**

Xenophobia in South Africa as a whole is a major manifestation of racism. Africans from other countries bear the wrath of black South Africans who perceive them as usurpers of the already limited job opportunities that they themselves are vying for.

Xenophobia describes attitudes, prejudices and behavior that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity.<sup>135</sup> Manifestations of xenophobia occur against people of identical physical characteristics, even of shared ancestry, when such people arrive, return or migrate to states or areas where occupants consider them outsiders.

This part of the dissertation explores subjects that have received inadequate attention in the past. Until recently, xenophobia and discrimination against foreigners was seldom differentiated from racial discrimination against nationals.

This segment of the dissertation is intended to deepen understanding of the specific character of discrimination against migrants, refugees and other non-nationals, in order to better determine and implement effective remedies.

The scenes that I am about to describe embody xenophobia. I should hope that when this dissertation is read, these scenes would belong to the past.

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<sup>135</sup> International Migration, Racism, Discrimination and Xenophobia, ILO, In Consultation with the office of the UN High Commissioner for Refugees (UNHCR), August 2001.

The South African government despite its progress in black-white reconciliation is tolerating an alarming rise in xenophobia as shown by the attacks against immigrants and asylum-seekers.<sup>136</sup>

During the apartheid era, many African countries opened their doors to South African migrants, exiles and refugees and paid a heavy economic price for their opposition to apartheid.<sup>137</sup> Now that the tables are turned, it is shameful to see how hostile South Africans have become today to migrants and refugees who are in need.

In general, public attention has been focused on the allegedly socio-economic impact of migrants within South Africa as a whole and the NWP in particular, despite the absence of evidence to confirm this.<sup>138</sup>

Between April and August 2001 I interviewed foreign farm workers, asylum-seekers, refugees, hawkers, Mozambicans and Zimbabweans as well as officials from the Department of Home Affairs and the South African Police Service in the NWP. From the responses I got, my findings indicated pervasive and widespread abuse of migrants in South Africa.

In the process of my interviews, a Home Affairs official, who was more than known to me and who knew me well in return, stopped me. He questioned my activity amongst the Ethiopian hawkers I questioned on the streets of Mafikeng. It is almost as if to say “and who the H... do you think you are?” For me it was not a case of who I was, it was a case of me being too black in a country run by lighter pigmented “blacks”. I was hurt, but there was nothing I could do about my feelings.

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<sup>136</sup> According to the US Human Rights Group (Human Rights Watch), [www.ips.org](http://www.ips.org)

<sup>137</sup> Final Report, National Conference on Racism *Opcit*, n.111 at P 3.

<sup>138</sup> Final Report, National Conference on Racism *Ibid*, n.137 at P 3.

John, (not his real name) a South African citizen born in Zimbabwe said he was interrogated a few times by law enforcement officials about the fact that he is “too dark to be South African”. African asylum seekers and refugees are often treated differently from asylum seekers from Europe and elsewhere.

In some instance they are, together, exploited. This is evident from the Mmabatho society, renting out their houses to Botswana University students only because of the high rental prices their governments pays per room. There is nothing unusual about seeing adverts in newspapers, university notice boards or public places reading:

Rooms to let Botswana students only.

Surely Botswana students are outsiders, or who should also be labeled as “amakwerekwere”, in that, they too, like a Zimbabwean student are not South African at all. Section 21 of the country’s Bill of Rights, which deals with issues of residence, declares that every person shall have the right to choose his or her place of residence any where in the national territory.

Accommodation in the Mmabatho area is only one of many examples in the region where ones national origin or skin colour decides whether you get in or stay out. A number of child labourers from Mozambique that I came across at a petrol station in Ventersdorp, who worked on a farm owned by one Mr. Venter (not his real name), some as young as fourteen said that they were paid R10, 00 for their services per month. My conversation with them also indicated that physical abuse had taken place.<sup>139</sup>

Police rarely investigate or prosecute farmers for abuses, and in some instances contribute to the exploitation of farm workers by deporting them without pay on the request of farmers who have employed them.

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<sup>139</sup> From an informal discussion of the, 23<sup>rd</sup> of June 2001.

Despite the proliferation of greater discourse on tolerance of diversity and respect for human rights in the NWP, xenophobic attitudes continue to prevail. With deep roots in practices of ethno-racial discrimination, xenophobia disproportionately affects foreigners or immigrants from countries with large indigenous populations.<sup>140</sup>

Human Rights Watch reports found evidence of “extensive corruption” in the refugee determination process with officials in the Department of Home Affairs “demanding bribes for the scheduling of interviews and for the granting of permits”. In the process asylum-seekers from several African countries, including Angola, Mozambique, Tanzania and Malawi, are routinely turned down.<sup>141</sup>

The report by the Human Rights Watch group also deplores what it calls South Africa’s “increasingly xenophobic public culture” which tolerates “unsubstantiated and inflammatory statements” by politicians that blame migrants for the current crime wave, rising unemployment, or even the spread of diseases.<sup>142</sup>

As a result, migrants have increasingly become the target of abuse at the hands of South African citizens, as well as members of the police, the army and the Department of Home Affairs.

Foreign hawkers, who are often asylum applicants with temporary residence permits, repeatedly suffered as targets of violent protests, beatings, and other forms of intimidation by local competitors and ordinary criminals, according to the report.<sup>143</sup> It is noted that the NWP is by no means an exception to the said report.<sup>144</sup>

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<sup>140</sup> Review of Reports, studies and other documentation for the Preparatory Committee and The world Conference on Racism, Resolution 2000/3

<sup>141</sup> US Human Rights Watch *Opcit*, n.136 at P 12.

<sup>142</sup> US Human Rights Watch *Ibid*, n 141 at P 13.

<sup>143</sup> US Human Rights Watch *Ibid*, n.142 at P 13.

<sup>144</sup> US Human Rights Watch *Ibid*, n.143 at P 15.

In one incident in Mafikeng, according to an Ethiopian hawker, his goods were stolen from him on the streets in a crowded public area. When he pursued the culprit and caught up with him and took him to the police station the police simply assured him that they would deal with the matter and told him he could leave. According to him, he still comes across the culprit who tells him that the police do not investigate cases against South Africans instituted by a “kwerekwere”.<sup>145</sup>

South Africa only began to abide formally by international refugee law after signing a Basic Agreement with UNHCR in 1993. South Africa became a party to the Organization of African Unity (OAU) and the United Nation (UN) refugee conventions in 1995 and 1996 respectively. The treatment of refugees and asylum-seekers in South Africa does not fully comply with international refugee law.

Ironically as earlier explained, in the NWP foreigners from Botswana are received positively. This is largely attributed to a shared “language, culture and history” which operates across the border. Indeed, the border itself is an artificial product of colonialism, which divides the Batswana in the area.<sup>146</sup>

Here cultural, ethnic and linguistic commonalities appear to be more important to local relations than nationality does. Xenophobic tendencies act as a form of hostility and violence in the NWP. Many of the criminal and violent actions against foreigners in South Africa also relate to financial exploitation.<sup>147</sup>

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<sup>145</sup> Personal communication with the affected Ethiopian, June 2001.

<sup>146</sup> Browyn Harris, A Foreign Experience: Violence, Crime and Xenophobia during South Africa's Transition, Vol. 5, August 2001.

<sup>147</sup> Browyn, ibid, n.146 at P 63.

However, not all hostility and violence is underpinned by material gain. Certain incidents are motivated directly by the foreignness and/or nationality of individuals. These incidents can be labeled “xenophobic”. Foreignness, rather than nationality *per se*, is the direct focus of this form of discrimination.

One central, daily practice that many foreigners face within this system of xenophobia is that of public hostility. Respondents confront constant harassment and insults from ordinary South Africans within the North West Province.

“Makwerekwere, go home “, is a familiar refrain from a range of social players, such as shoppers, pedestrians, passengers, neighbours, and work-colleagues alike. Xenophobic actions infiltrate the smallest social relations.

One Nigerian by the name of Peter (not his real name) on the streets of Mafikeng illustrates an incident:

**As told by a young Nigerian man:**

“I was in those, those small taxi: Eh, there’s just one lady, one big mama who came to me. You know another thing they always want to talk to us in their own language, they don’t realize that we don’t understand, and if you are mistaken there it’s a problem. When they tell you “Dumela” [and] if you don’t respond [they say] ‘ay these Makwerekwere!’”

“So I get a problem with that mama. She [greeted me in tswana], I respond very well because at that time it was 1996 [and I had learnt a bit]. There I catch a little bit of their words [or] language. She told me “le kae”, I said “keteng”, but she realized that the accent is not South African. She start to ask me “ay guy where are you from?” I start to joke a little bit: No, I’m South African...Mandela is my President, and South Africa is my country....”

She kept quiet [until; we get to the taxi rank when] she start to tell people, “ay, this kwerekwere, what, what...” People come to me they start to shout. They searched me. They nearly want to beat me.

But there is one guy who was responsible. Always [in those cases], you find someone who can understand things. [It] is the one who always maybe keep them quiet or [something] like that, there is one guy... a taxi driver. He came and [calmed] them down, he keep me [safe] and took me and I escaped that day, but it was very bad, because I didn't know that it should happen like that.

The way I was talking [with] that lady, I didn't know that //and that there is many people there, when she start to shout. Anyway they will beat me...maybe. She start to tell me, "hey guy you're lucky, go you're lucky".<sup>148</sup>

In this case an instance of xenophobia at a congested taxi rank almost results in vigilante violence. It is interesting however; to note that such violence is averted by the so-called "a responsible guy" and that, according to the respondent, you always find someone who can understand things. This position of responsibility indicates amongst others, that not all-South Africans within the NWP are xenophobic.

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<sup>148</sup> Informal Interview, July 2001.

#### 2.4. Summary.

In this chapter incidents of racial discrimination and xenophobia in the NWP have been examined. Some of these incidents have been explained as the affected parties told them, as the researcher passed through streets and towns within the province and having informal discussions with the [all] members of the society.

Reference has also been made to the available literature on the topic in the province and the country as a whole.

The central cause of these forms of discrimination, it seems, lies amongst others in the historical development of the province and the attitudes of the society, towards each other during the time of change. Discrimination is not a cause but an effect, it is a consequence of the conception that we have of the human identity, of the way the man of today thinks of himself: in opposition, not in dialogue, self sufficient and not in the need of the other to be himself.

In the next Chapter it is proposed to analyze the findings of the empirical evidence collected from the survey.

## **CHAPTER THREE: Analysis of the Empirical Evidence**

### **3.0. Introduction.**

This chapter seeks to present and analyze the results obtained from the responses to the questionnaires administered to a selected sample of residents of the Mmabatho/Molopo region.

Before analyzing the results of the survey, the methods used in illustrating such results will be discussed.

### **3.1. Methodology.**

Primary data was collected during the period 1 September 2001 and 1 January 2002. This data was largely attained by way of administering structured questionnaires and focused formal and informal group discussions with affected members of the NWP (refugees, South African citizens, non-South African citizens, etc.)

A total of 160 questionnaires were distributed at schools, work places and among members of the ordinary public. 126 responses were received. The responses contributed to follow-up interviews and qualitative detail. Similarly, a 'snap survey' on attitudes to 'race relations' and 'foreigners' was administered to participants (both South African citizens and non-South African citizens) at a workshop conducted at the University of North West on the 29<sup>th</sup> March 2002. The information provided was utilized to supplement the overall research process and confirm certain findings.

In addition to these sources, media reports and informal discussions with the relevant role players supplemented the primary data. The research was also informed by a range of activities such as seminars and public education

campaigns that took place, in particular the Provincial Conference on Racism, The World Conference Against Racism, Xenophobia and Related Intolerances. Government's policy of 'Batho Pele'<sup>149</sup> also informed the nature of the research.

### **3.1.1. Racial Discrimination.**

Histograms are referred to as '**Figures**', which are numbered 1 and 2. The histograms refer to the responses obtained in relation to questions 1 to 8 in Section One of the questionnaire<sup>150</sup> against questions 3.4 and 3.5 in section three of the questionnaire.<sup>151</sup> These parts in the questionnaire were referred to because they proved to be the only factors with a high determining factor of racial discrimination.

### **3.1.2. Xenophobia.**

Histograms are referred to as '**Figures**', which are numbered 3 to 5. The histograms refer to responses obtained in relation to questions 1 to 8 in Section Two of the questionnaire<sup>152</sup> against questions 3.3, 3.4 and 3.5 of the questionnaire. These questions were considered because they too proved to be the only factors with a high determining factor of xenophobia in the province.

Due to the results obtained after the statistical analysis, it was apparent that only the 'yes' part of each section tended to have an impact on the issue of racial discrimination and xenophobia. As a result of this, the graphs represent only the 'yes' part of each question in the two sections.

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<sup>149</sup> Means, 'putting the people first' and getting them involved.

<sup>150</sup> See Below: Appendix 1 (The Questionnaire)

<sup>151</sup> Appendix 1 *Ibid*, n.150 at P 90.

<sup>152</sup> Appendix *Ibid*, n.151 at P 91.

### **3.2. Perceptions on Racial Discrimination.**

In this part of the study it was clear that there were only two factors that proved to be of an empirical value with regards to racial discrimination. These two factors that influenced or have an impact on racial discrimination in the NWP as depicted from the questionnaire are, one's race and one's nationality.

The racial groups considered were 'blacks and 'whites', although other racial groups were considered, they did not have an impact on racism in the NWP. With regards to nationality the two classes considered were 'South African-citizens' and 'others'. Other in this sense refers to any other person who is not a South African citizen.<sup>153</sup>

#### **3.2.1. The effects of 'Race' on Racial Discrimination.**

An attempt was made to distribute the questionnaires to all affected members of the society. Here, I mean that the (administered) questionnaires targeted all racial groups.

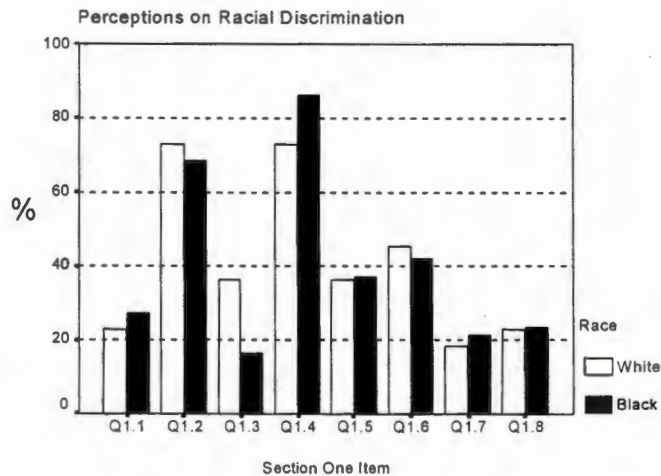


The respondents were partially, racially represented with black respondents in the majority. Each of these responses will be closely analyzed in relation to race.

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<sup>153</sup> It could refer to Zimbabweans, Americans, Zambians, etc. Section 4 of Appendix 1

**Figure 1.**



Eight questions were asked to determine the effect of one's race on racial discrimination.

**Figure 1/Question 1.1.**

This question was motivated by the fact that it is usually people of the opposite racial group that have a problem (racial) towards other people of another race.

**Observations.**

From the responses of the participants at least 22% of whites felt that they had a racial problem with non-whites, on the other hand 27% of blacks confirmed that they have a racial problem.

It is then clear that from the results obtained, more black people have a problem with other racial groups as compared to whites. The difference in the amount of both white and black people that have a racial problem is not a notable significance, it could then be said that there is a mood of tolerance of other races towards each other.

### **Figure 1/Question 1.2.**

#### **Observations.**

72% of whites indulge in work related or social activities with cross-racial groups whereas 70% of blacks indulge in cross-racial activities. Both racial groups make an attempt to indulge in cross-racial activities. This is evident from the fact that over half of the total number of respondents, both black and white, said that they indulge in cross- racial activities.

Given the fact that blacks formed the majority of the respondents, their cross racial interactions are not as high as that of their white counter-parts, although an effort is made by both groups to interact with other racial groups.

### **Figure 1/Question 1.3.**

#### **Observations.**

About 36% of white people perceived that they are more productive than blacks whereas about 17% of blacks believe that white people are more productive than they are. It is clear here that white people have the perception that they are more productive than black people are.

There is a clear indication here of the black reluctance on the issue that white people happen to be more productive than them. It should be noted here that productivity in this sense means 'economically'. This point was explained to the respondents although it is not specified in the annexed questionnaire.

### **Figure 1/Question 1.4.**

#### **Observations.**

In this part of the questionnaire there is a high level of tolerance amongst black people with regards to children of all racial groups playing together, there is the

perceived feeling by both groups that children should not be involved in the racial tension. 84% of black people felt that white children and black children should be left to play together in parks and 73% of white people felt the same way.

When it comes to issues relating to children and race both groups are sentimental about the topic, there is a common feeling to leave children out of the race issue. However black people seem to be more tolerant of white children and black children playing together than their white counter parts. Cognizance must be taken of the fact that black people were the majority in the response to this question. The views of whites, obtained through discussions have also informed this conclusion.

#### **Figure 1/Question 1.5.**

This question was motivated by the fact that we all have been victims or perpetrators of racism in one form or another. The mere passing of racist remarks constitutes an attitude towards other racial groupings.

#### **Observations.**

36% of white people say that they have been victims of racism and 37% of black people say they have been victims of racism. Between blacks and whites the two groups have at one point in time been victims of racism, they have experienced racism against them.

#### **Figure 1/Question 1.6.**

The Provincial Conference against Racism motivated this question in that the attendance of participants at the conference was not racially representative.

Very few white people attended the conference; this was as if to say the fight against racism in the province was one to be fought by black people alone.

The provisions of section 9 of the Bill of Rights have also informed this part of the questionnaire.<sup>154</sup>

**Observations.**

46% of whites are optimistic about the fact that we can have a non-racial province whereas 42% of blacks feel the same. White people in the province seem more ready to work towards a non-racial society in the province.

White people are more ready to eradicate racism in the province and as such feel we can actually achieve a non-racist province, whereas fewer blacks are of the same view, this is perhaps due to the fact that they have experienced more racism against them than their white counterparts.

**Figure 1/Question 1.7.**

The Bill of Rights provides, amongst others, for equality.<sup>155</sup> It aims at a non-racial society. The National Government and the Provincial Government have embarked on many workshops to eradicate racism in provinces and the country as a whole, in most instances the workshops conducted involve top governmental officials rather than the ordinary taxpayer, the ordinary man in society.

**Observations.**

18% of whites feel that the government is doing enough to curb racism in the province and 22% of blacks feel the same.

It is clear from the responses here that both blacks and whites are of the feeling that the government is not doing enough to curb racism in the province. On this note they share the same sentiments.

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<sup>154</sup> The equality clause, Section 9.

<sup>155</sup> The Equality clause, Ibid n.2 at section 9 (3)

### **Figure 1/Question 1.8.**

This question was informed by the theme of the research, 'the search for equality', in that, section 9 of the Constitution provides for equality at all levels of life without any distinction. It is questionable if the ordinary person in society is aware of this clause and if so whether it is [truly] respected.

#### **Observations.**

23% of whites are of the feeling that the Bill of Rights is adequate to eradicate racism and 24% of blacks feel the same.

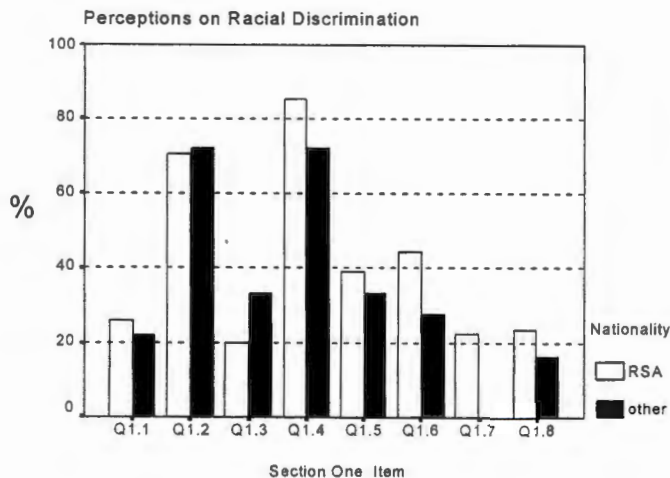
It is clear that a very minimal percentage of both races actually do feel that the Bill of Rights is adequate, perhaps due to the fact that some of them do not know the actual contents of the Bill of Rights in order to weigh its provisions against society in relation to racism.

They seem to share the same feeling that no piece of paper is adequate enough to influence the conduct [racial] of society towards each other. Other measures might have been taken to ensure that the provisions of the Bill of Rights are implemented, but the question is, are these measures enough? Why does society not feel their existence?

#### **3.2.2. The effects of 'Nationality' on Racial Discrimination.**

In this part of the paper, it is of importance to emphasise that the majority of the participants were of South African origin of all racial denominations. Non-South Africans were however not excluded from the research in that they too form an empirical part of the society.

**Figure 2.**



In this section the same questions asked in 3.2.1 above had been asked, only this time in relation to nationality, in order to determine the effect of one's nationality on racial discrimination given our diverse society.

**Figure2/Question 1.1.**

This question was motivated by the fact that it is believed that non-South African citizens are more receptive towards other racial groups irrespective of their national origin.

It was also motivated by the fact that black South African nationals seem to be more receptive towards whites of non-South African origin than blacks of non-South African origin. It is then assumed that white South African citizens are equally receptive of non-South Africans of all races.

**Observations.**

25% of respondents to the questionnaires say that they have a problem with other racial groups where as about 22% of non-South African citizens say that they have a problem with other racial classes.

It should be emphasized at this point that South African and non- South African respondents spoken of here represent all racial classes.

**Figure 2/Question 1.2.**

**Observations.**

Here too it is indicated that both South African and non-South African respondents to the sample indulge in cross-racial activities at almost the same level. However, non-South Africans seem to indulge in cross-racial activities more than South African citizens.

70% of South African respondents indulge in cross-racial activities and 71% of non-South African respondents indulge in cross-racial activities. It was also apparent in this question that non-South African respondents were more willing to participate in cross-racial activities than South African respondents.

**Figure 2/Question 1.3.**

**Observations.**

20% of South African respondents believe that white people are more productive than black respondents were whereas 36% of non-South Africans respondents believed that white people were more productive than blacks.

In this part of the sample, South African respondents have the perception that whites are not more productive, whereas non-South African respondents believe that whites are more productive than blacks. This view is perhaps due to the fact that they felt black South Africans were lazy and reluctant to work, hence less productive than white South Africans.

**Figure 2/Question 1.4.**

**Observations**

This part of the study strikes very interesting results. 83% of South African respondents felt that white children and black children should be left to play together whereas 72% of non-South African respondents believe that white children and black children should be left to play together in parks.

It was expected that the results obtained from the response of non-South African respondents would have been higher than that obtained from South Africans, in that they have more international exposure to cross-racial interactions. The South African respondents on the other hand showed a willingness to make the society a non-racist society by allowing children of all races to interact with each other.

**Figure 2/Question 1.5.**



**Observations.**

It is noted that South African respondents formed the majority of respondents to this study, hence the outcome in this question is as is-that more South Africans would have been victims of one form of racism than non-South Africans.

49% of South African respondents stated that they have been victims of racial discrimination and only 47% of non-South African respondents stated that they had been victims of racial discrimination.

It is evident, from the results obtained, that racial discrimination exists in the NWP and that it is not only South African citizens who become victims of this form of discrimination, however the majority of victims and perhaps perpetrators of racial discrimination are South African citizens.

### **Figure 2/Question 1.6.**

#### **Observations.**

In this question 42% of South African respondents believed that a non-racist society could be achieved whereas about 27% of non-South Africans believed such a society was achievable.

From the empirical evidence, it is apparent that South Africans are more optimistic about the achievement of a non-racist society. This response could perhaps be due to the fact that they have experienced enough racism and are ready to change their ways.

There seems also to be a degree of tolerance towards other racial groups

### **Figure 2/Question 1.7.**

#### **Observations.**

22% of South African respondents felt that the government is doing enough to curb racism in the province whereas there was no positive response to this question from non-South African respondents.

All the non-South African respondents were unable to judge whether or not the government was doing enough to curb racial discrimination. On the other hand, very few South African respondents felt that the government is doing enough to deal with the issue of racism in the province.

### **Figure 2/Question 1.8.**

#### **Observations.**

23% of South African respondents believed that the provisions of the Bill of Rights are adequate to eradicate racism in the province and 8% of non-South

African respondents believed that the Bill of Rights is enough to curb racism in the province.

It is instructive here that both groups of respondents felt that the provisions of the Bill of Rights on their own not enough to eradicate racism in the province. More needed to be done.

### 3.3. Perceptions on Xenophobia.

This part of the study considers only the responses obtained in relation to the three determining factors that affect or contribute towards xenophobic attitudes.

These factors are:

- One's race;
- One's nationality and
- One's residential location.

The racial groups considered in this segment of the study are whites and blacks. With regards to the aspect of one's nationality, the two vulnerable groups considered are South Africans and 'others'. Others in this respect represent all those who are not South African citizens. It was also depicted that one's residential area tended to influence the way in which one perceives foreigners. The two groups of residential areas, thus considered, are rural and urban areas.

As pointed out earlier a lot of the hostility meted out to foreigners relates to financial exploitation. However not all hostility is underpinned by material gain. Certain incidents are motivated directly by the foreignness and/or nationality of individuals. These incidents can then be labeled 'xenophobic'.

It is important to highlight a subtle distinction behind the form of xenophobia, that is, to separate 'foreignness' from 'nationality' as the underlying impetus.

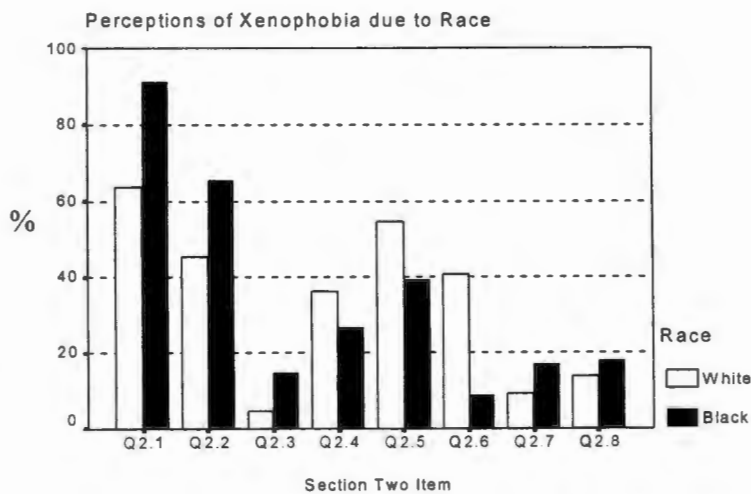
In the former hostility is motivated by the general sense that the individual is not South African. It is not their specific nationality as much as their foreignness, or non-(South African) nationality, that prescribes xenophobia.

I shall analyze such actions in this section.

### 3.3.1 The Effect of "Race" on Xenophobia.

The questionnaires were targeted at all racial groups although blacks formed the majority of respondents to the questionnaire. Each of the responses to the questionnaire will be closely analyzed in relation to the factor of race.

**Figure 3.**



Eight questions were asked to determine the effect of xenophobic tendencies or attitudes.

### **Figure 3/Question 2.1.**

This question was motivated by the fact that a lot of black people who were involved in informal discussions on xenophobia did not know what xenophobia is. The depicted factor here was that a majority of them were illiterate. This aspect will be considered in chapter 4 and 5 of this paper.

#### **Observations.**

62% of white people said that they knew what xenophobia is and 91% of blacks said that they knew what xenophobia is.

More black people knew what xenophobia is. 38% of white people said that they did not know what xenophobia actually is.

### **Figure 3/Question 2.2.**

#### **Observations.**

63% of black respondents believed that there was a xenophobic problem and 43% of whites felt the same.

More blacks seemed to believe that there is a xenophobic problem; this is attributed to the fact that they formed the majority of respondents to the questionnaire. 77% of whites believed that there is no problem of xenophobia, perhaps because they did not know what xenophobia is.

### **Figure 3/Question 2.3.**

#### **Observations.**

3% of white respondents said that they were xenophobic and 17% of blacks said that they were xenophobic.

### **Figure 3/Question 2.4.**

#### **Observations.**

38% of whites have been victims of xenophobia and 24% of blacks have been victims of xenophobia in the province.

More white people seem to have experienced xenophobic attitudes towards them than blacks; this could be attributed to the fact that they are not South African citizens. Perhaps, too, because they know xenophobia to be some form of discrimination.

### **Figure 3/Question 2.5.**

#### **Observations.**

57% of white respondents and 40% of black respondents believe that South African government institutions considered ethnicity than qualifications in selecting potential employees.

It is clear from the survey that both groups believed that people are not employed on the basis of their qualification but rather on 'affirmative action'.

Black respondents, however seem to believe that affirmative action should strictly be the determining factor in the employment of people, 60% of them felt that people are employed on the basis of their skill.

### **Figure 3/Question 2.6.**

#### **Observations.**

41% of white respondents whereas 10% of black people respondents preferred white people from other countries to black people.

White people seem to display a form of discrimination [racial] against blacks. Their feeling is not one of xenophobia but rather one based on race. Blacks on the other hand also show a feeling of racism towards whites rather than that of xenophobia.

### **Figure 3/Question 2.7.**

#### **Observations.**

11% of white respondents and 18% of blacks displayed a feeling that the South African government is doing enough to get over the fear of the unknown [xenophobia].

The two groups share the same sentiments that the government is doing enough. Both groups showed that they were aware of the existence of xenophobia in the NWP and that a lot had to be done by government to eradicate or curb xenophobia in the province.

### **Figure 3/Question 2.8.**

#### **Observations.**

18% of black respondents and 16% of white respondents felt that the provisions of the Bill of Rights are enough to eradicate xenophobia. Both groups share the same sentiment that the provisions of the Bill of Rights are not enough to curb xenophobia in the province. There is a shared feeling amongst them that other mechanisms must be put in place to eradicate xenophobia.

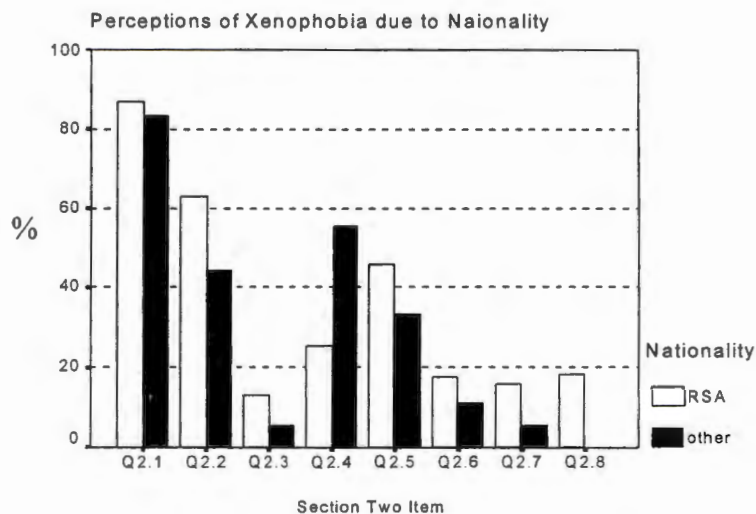
### **3.3.2. The effect of 'Nationality' on Xenophobia.**

Foreigners, by virtue of their foreignness, offer valuable commentary on the South African society. They bring an outsider's perspective to practices that most

South Africans accept as normal and conventional. In this way, a study of xenophobia against foreigners in the NWP is not just about foreigners.

It also affords an opportunity to interrogate the norms and practices surrounding xenophobia amongst the inhabitants. The effect of one's nationality on xenophobic attitudes and tendencies will be examined in this part of the study.

**Figure 4**



It should be pointed out that the South African citizens are inclusive of whites, blacks and all other races whereas 'other' represents blacks, whites and all other races of non-South African origin. It should also be noted that South African citizens make up the majority of participants to this sample.

**Figure 4/Question 2.1.**



This question was motivated by the fact that it was assumed that the majority of perpetrators are black South Africans. For most black respondents, there is no critical interrogation of white racism.

This was generally accepted and explained away by recourse to relations of power during apartheid. In contrast, respondents expressed surprise that many black South Africans are xenophobic but tended not to want to accept it.

This directly contradicts expectations of a common 'African Solidarity' in post-apartheid South Africa.

**Observations.**

85% of South African respondents and 83% of non-South African respondents said that they knew what xenophobia is. It is noted that the South African respondents formed the majority of respondents to this question, hence the high response from them.

There is undoubtedly a common knowledge of what xenophobia is amongst both South African respondents and non-South African respondents. The participants under both groups included all races, i.e. blacks, whites etc.

**Figure 4/Question 2.2.**

**Observations.**

62% of South African respondents believed that xenophobia is a problem whereas 43% of non-South Africans believed that it was. It is also emphasized, here that, South African respondents formed the majority of respondents to this question.

There is a common feeling that xenophobia is a problem in the NWP. This in essence confirmed that it actually exist in the province. It is, however, surprising that more South Africans believed it is a problem in the province.

### **Figure 4/Question 2.3.**

This question brought to light the manner of acceptance of foreigners amongst the respondents.

#### **Observations.**

Of all the 126 questionnaires collected, only 16% of South African respondents said that they are xenophobic. This figure was expected to be higher, given the theoretical observations of xenophobia in the province. 4% of non-South Africans said that they are xenophobic. The reason for this xenophobia is unknown.

It would appear that there was a level of denial amongst the South African respondents with regards to xenophobia. Obtaining a true reflection of the majority of respondents to the survey has been difficult. Coupled with this level of denial comes the mixed feeling of the acceptance of foreigners amongst South Africans in the NWP.

### **Figure 4/Question 2.4.**

This question was motivated by the fact that foreigners were more prone to being victims of xenophobia. However amongst South Africans there is also a level of xenophobia, which relates to amongst others, the culture or tribal origins of a person, or even to the town that a particular person comes from or the language that they speak.

#### **Observations.**

24% of South African respondents and 58% of non-South African respondents have been victims of xenophobia. More foreigners have experienced xenophobia against them than South Africans.

It was envisaged that more non-South Africans would have been victims of xenophobia. It is however noted that they (non-South Africans) formed the minority of respondents. Another factor is that South African citizens have also experienced xenophobic attitudes towards them from their fellow South Africans. This goes to show that the issue of xenophobia cuts across the line of national origin.

#### **Figure 4/Question 2.5.**

##### **Observations.**

44% of South African respondents and only 35% of non-South Africans believed that institutions of government hire employees on the basis of ethnic origin rather than one's qualification. The respondents are of the view that government is doing enough, also that; affirmative action is widely implemented in the employment sphere.

It should be emphasized that the respondents to this question came from all walks of life, students, the unemployed etc, therefore the responses received could emanate from those who were employed and have felt the effect of affirmative action.

There is also a common feeling amongst both groups that people are not employed on the basis of their qualifications but rather on where they come from. South Africans felt more strongly about this point. Foreign respondents also emphasized that they were vulnerable to both economic exploitation and xenophobia if employed by institutions of government.

Based on the findings from informal discussions and the literature review together with the empirical data, it is evident that foreign respondents are hired according to their experience in South Africa, the countries from which they come, their legal status in South Africa and their race.

#### **Figure 4/Question 2.6.**

##### **Observations.**

28% of South African respondents and 15% of non-South African respondents said that they preferred whites from other countries to blacks. There was a slight level of racism depicted in this response from both groups.

The response of South African respondents was expected to be high because the majority of the respondents were black South Africans who are assumed to be xenophobic. The reason for the racial divide amongst the non-South Africans is also unknown. It was expected that the responses to this question, from non-South Africans would have been 'no', because of their international exposure to other races and cultures. There is, however, a shared feeling that race is not the reason for xenophobia.

#### **Figure 4/Question 2.7.**

##### **Observations.**

17% of South African respondents and only 4% of non-South Africans believed that the South African government was doing enough to eradicate xenophobic tendencies.

It is apparent from the results above that there is a common feeling shared amongst both groups of respondents that the government is not doing enough to get over the fear of the unknown.

A lot more is still to be done by institutions of government to ensure that citizens did not cling onto xenophobic tendencies or behaviours.

It is also surprising that non-South African respondents felt that the government is actually doing enough. Although this number is very minimal it is assumed that those who responded affirmatively have not experienced the effect of xenophobia against them.

#### **Figure 4/Question 2.8.**

##### **Observations.**

19% of South African respondents believed that the provisions of the Bill of Rights are enough to remedy xenophobia and there was no response from non-South African respondents. It is thus assumed that they felt the Bill of Rights is not adequate to curb xenophobia.

From the response received it is then clear that there is a common feeling amongst both groups that the provisions of Bill of Rights has had no significant impact on the guaranteeing of equality and the eradication of all forms of discrimination. The responses from South African respondents represent a need to implement other mechanisms, aside from the Bill of Rights, to remedy xenophobia in the province and the country as a whole. The respondents also show a gradual drift away from xenophobic tendencies and behaviors towards the acceptance of foreigners.

#### **3.3.3. The Effect of 'Residential Locations' on Xenophobia.**

In this part of the study it was assumed that one's residential location tended to trigger some level of xenophobia. Because of the availability of resources and all sorts of opportunities in the city, it is believed that people from cities are more prone to being xenophobic than people from rural areas or small town.

It is important to recognize the efforts to contest and resist the general climate of xenophobia.

It also significant to recognize that within this general context of hostility towards foreigners, regional variations do occur within the province and the country as a whole, that is, in relation to where particular foreigners are represented and found.

This seems to have an important impact on their reception. Linked to this is the occupational variance amongst foreigners, that is, the type of work being performed by the foreigner (or in relation to foreigners), although this factor did not form part of this analysis it has, however, been considered in the distribution of the questionnaires.

In many instances regional location and occupation work hand in hand. For example, miners and farm workers are tied to mining towns and farming areas (Rustenburg and Kronstaad regions), while hawkers are usually located in busy towns.

More generally, border towns in South Africa often benefit from cross-border trade. For example, many travelers from Botswana stopover in Zeerust en-route to Johannesburg. In areas like this, foreigners may receive a warm welcome because they are clearly connected to the economic wealth of the region and they are not perceived as a threat to the local economy.

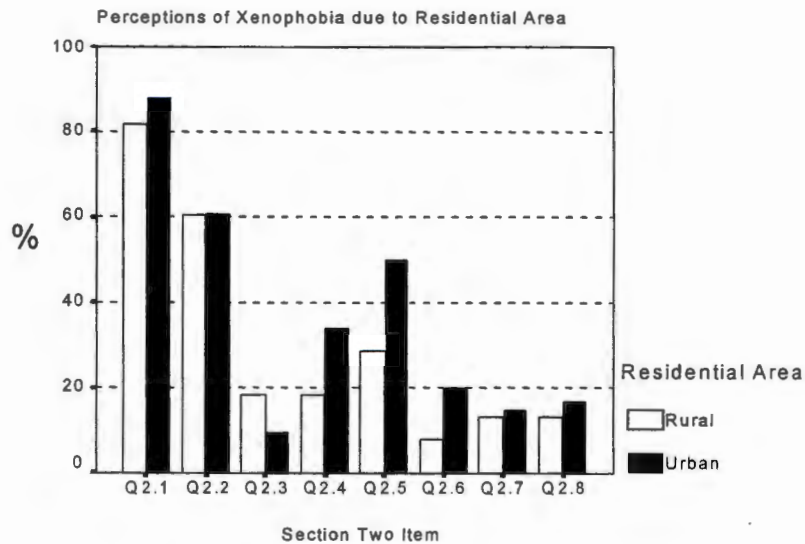
In certain areas, historical and cultural ties also influence the perceptions of foreigners. Human Rights Watch (1998) comments that:<sup>156</sup>

[e] thnic groups in border areas can often be found on both sides of the border. Tswanas live in both South Africa and Botswana. Cross-border traffic is frequent, and special procedures must exist to facilitate border crossings for people living in border areas.

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<sup>156</sup> Human Rights Watch (1998). 'Prohibited Persons' in South Africa, New York, p16.

**Figure 5**



**Figure 5/Question 2.1.**

This question was motivated by the fact that a majority of people from the rural areas, who were possible respondents, did not know what xenophobia, is.

**Observations.**

81% of respondents from rural areas and 90% of respondents from urban areas said that they knew what xenophobia is. It was indicated that both groups had a general understanding or knowledge of what xenophobia is. Xenophobia is a well-known concept amongst both urban and rural dwellers.

**Figure 5/Question 2.2**

**Observations.**

60% of both urban and rural respondents believed that xenophobia is a problem in the NWP.

Both groups of residents indicated that they had sufficient knowledge of xenophobia and its dimensions, they actually believed that it exists in the NWP and that it is a problem in the province.

**Figure 5/Question 2.3.**

**Observations.**

19% of rural respondents and 10% of urban respondents admitted that they are xenophobic. More rural residents seemed to be xenophobic as compared to urban residents.

One's residential area seems to affect one's xenophobic tendency. It was expected that rural residents would possess a more positive attitude towards foreigners.

**Figure 5/Question 2.4.**

**Observations.**

19% of rural respondents and 52% of urban respondents had experienced xenophobia towards them. Xenophobia is, however, higher in urban areas. It is noted that urban respondents formed the majority of respondents to this questionnaire.

**Figure 5/Question 2.5.**

**Observations.**

5% of rural respondents and 20% of urban respondents preferred white people from other countries to blacks. This is also indicative of xenophobic attitudes in urban areas based on race.

Urban residents were more receptive to white foreigners than black foreigners. There is, however, a perceptible level of racism amongst rural residents towards white people. This behaviour does not depict any xenophobia.

**Figure 5/Question 2.7.**

**Observations.**

16% of rural respondents and 17% of urban respondents believed that the government is doing enough to get over the fear of the unknown [xenophobia].

Both groups also show a willingness to eradicate xenophobia in the province through the help of government.

**Figure 5/Question 2.8.**

**Observations.**

16% of rural respondents and 18% of urban respondents believed that the provisions of the Bill of Rights are enough to remedy xenophobia.

There is also a common view shared amongst both groups that the provisions of the Bill of Rights are not enough to remedy xenophobia. This feeling is however higher amongst urban residents.

### 3.4. Summary.

In this chapter the factors influencing the two forms of discrimination (racial and xenophobic) have been examined using the responses to the questionnaire. Problems associated with the different forms of discrimination, in particular racial and xenophobic have also been identified.

These arise from differences in race, national origin, residential location, tribe etc. It has also been determined that the two forms of discrimination exist in the NWP. In the next chapter it is proposed to deal with the empirical findings of the survey.

## CHAPTER FOUR: EMPIRICAL FINDINGS.

### 4.0. Introduction.

This chapter brings out the main findings of the survey. The findings of the survey depended, to a large extent, on the views of respondents to the questionnaire. The respondents were from various agencies of life with diverse opinions on the problem under study. Thus their views were largely influenced by their daily interactions with others in society.

It is also evident that the majority of respondents were members of society with an understanding and experience of both racial discrimination and xenophobia in the NWP.

Despite the fact that the above findings are based on the views of respondents from various agencies of life, there are also some common views shared in their diversity.

### 4.1. Findings: The Influence of 'Race' on Racial Discrimination.

**LIBRARY**

The findings in this part of the study depict a number of similarities from the diverse participants to the study. Racial discrimination is prevalent in the NWP.

It is also clear that both racial groups actually indulge in cross-racial activities, although white people are more receptive of other races in this aspect than black people. It is also clear that both groups are of the feeling that children should be left out of the racial issue in the province.

In this aspect black people are more of the view that children of all racial groups should be left to interact with one another. It is further seen that white people have the perception that they are more productive than blacks.

Of importance is the fact that both white and black people have been victims of racial discrimination in the NWP. Both groups have experienced it at more or less the same level, although black respondents had experienced it more against them.

This factor should not be of a surprise in that from the study in Chapter 2, the responses to this question, by black people, were in line with their historical experiences as depicted both by the study and the literature available on the issue in the province. It was, however, expected that the level of racial discrimination in the NWP experienced by black people would have been higher than the results obtained.

Both groups are optimistic about the achievement of a non-racial society in the province. White people are more optimistic about this factor.

Another indicator that was shared by both groups of respondents is that the Government is not doing enough to curb racial imbalances in the province and further that the provisions of the Bill of Rights are by no means sufficient to eradicate racism in the province.

What comes out from the survey is that racial discrimination does exist in the province and that government must do a lot more to curb the racial imbalances within the province, further, that the provisions of the Bill of Rights are not adequate in themselves to eradicate racism, in that most people do not know about the Bill of Rights and if they do, they do not feel its effectiveness.

#### **4.2. Findings: The Influence of 'Nationality' on Racial Discrimination.**

Despite the fact that the above findings were from respondents of different nationalities, there are some common views shared amongst them. This is evident from the fact that indications with regards to the needs of children of all racial groups to interact with each other are seen as important by both groups.

However, South African respondents were in the majority with regard to this question. It is also clear that to some extent, one's nationality affects the way in which an individual perceives other individuals of different races. This is evident from the fact that more South Africans said that they had a problem with other races.

Another important factor depicted in the research was the issue that South Africans do not believe that white people are more productive than blacks whereas non-South Africans of all races were of the view that white people are more productive than black people are. This in essence depicts a level of racism amongst the blacks of both South African citizenship and non-South African citizenship.

The study also discovered that both non-South African citizens and South African citizens have been victims of racism in the NWP province. In this regards it has been found that being a victim of racism has nothing to do with one's national origin, it all a matter of colour.

South Africans also seem to be of the view that we can achieve a non-racist society in the NWP; non-South Africans on the other hand, are not of this view. Of importance is the finding in question 2.7 of the survey in that non-South Africans reserved their comments with regards to whether or not government was doing enough to curb racism in the NWP. This is also evident from the response obtained from South African citizens, in that very few of them actually felt that the government was doing enough to curb racism in the province.

Both groups felt that the Bill of Rights is not adequate enough to curb racial intolerances in the province. There is a common feeling that there is a lot more that could be done by the government and that other [effective] mechanism should be set up to ensure racial equality.

The study consequently shows that racism is 'alive and kicking' in the NWP. In addition to this, it underscores, to a large extent, that an individual's racial grouping affects the way in which one perceives other individuals of opposite races. Nationality however, does not affect one's perception of other races. However, from the study, South African blacks are more prone to discriminate against other racial groupings based on race than non-South African blacks in the NWP.

The causes of these forms of racism are then owed to the historical development of the NWP and perhaps, to a large extent, to the life experiences of the individual.

The possible solutions here are that government should hold workshops that could bring together ordinary men and women to talk about issues that affect them. Further that, it is not enough to introduce these workshops and fora but a means of getting affected people, both perpetrators and victims, to be part of these fora.

#### **4.3. Findings: The Influence of 'Race' on Xenophobia.**

Xenophobia perpetuates myths and generalizations about specific nationalities. It operates in a context of asymmetrical media reporting and public sentiments about, 'Nigerians', 'Chinese', 'Zimbabweans' and other particular national groupings in the NWP. To say that one prefers white foreigners to blacks contributes to the hostile climate of xenophobia.

This, in turn, directs xenophobic actions towards specific nationalities. It is clear from the study that, xenophobia, whether based on foreignness or nationality, plays out across a range of institutions and personal interactions; and varying degrees of severity.

This study shows that more black people know what xenophobia is; this is perhaps due to the fact that they have either been victims or perpetrators of it. It is also shown that xenophobia exists in the NWP although the majority of respondents said that they are not xenophobic. Of importance is the fact that more white respondents said that they had been victims of xenophobia than blacks.

It is also apparent that authorities give more privilege to South African citizens when it comes to employment, solely because they are not foreign. This form of xenophobia operates in terms that are relative to South African identity and nationality. It operates at the boundary of South African versus non-South African. Under this view, white people feel more strongly about the criteria employed in the employment process.

It is also evident that white people discriminate more based on race rather than on nationality whereas blacks tend to discriminate more based on nationality/or national origin.

It is also clear that the stakeholders involved in public life [society] feel that government is not doing enough to curb the imbalances in the inequalities amongst people. It is also evident that government employs attitudes that can be termed xenophobic hence the level of xenophobia in society.

The general form of xenophobia contrasts to xenophobia that is motivated by nationality. This is more specific and focused. It feeds into stereotypes about particular countries of origin and comments directly on national membership.

From the findings, it is clear that one's race does not affect the xenophobic attitudes of the people of the NWP. However, from the informal discussions with the vulnerable groups, it appears that black foreigners are more vulnerable to xenophobic attitudes from black South Africans.

For many, racism lies at the heart of their negative reception in the province. Black foreign respondents explained that they received differential and discriminatory treatment in relation to their white counterparts. According to the respondents, black foreigners are at risk of xenophobic violence and exploitation than white foreigners. The perpetrators of such asymmetrical xenophobia are both black and white South Africans although the majorities are blacks; racism cuts across racial divisions at this level.

#### **4.4. Findings: The Influence of 'Nationality' on Xenophobia.**

This study shows that xenophobia is perceived asymmetrically in the NWP, with black African foreigners representing the primary victims/targets of xenophobic tendencies.

It is also evident from the results that newcomers to South Africa usually rely on networks of friends and relatives to assist them in their transition to a new society. Support structures based on commonalities such as the same nationality, shared language and foreignness are particularly important in attracting foreigners to specific places in the province.

It is important to recognize that such networking also compounds the potential for internal conflict within particular communities, especially those that have a background of conflict, war and political tensions. Although the number of respondents who said that they were xenophobic is minimal, it represents, to a large extent, a level of xenophobia amongst foreigners.

It is also evident that it is both South African and non-South African citizens who practice xenophobic attitudes. Another empirical finding is that nationality seems not to affect one's attitude or perception towards foreigners. Although 16% of South Africans say that they are xenophobic, this number is not large enough to conclude that nationality determines one's xenophobic behavior.

Xenophobic tendencies also cut across the issue of nationality in that in some instances South African citizens and non-South African citizens have experienced discrimination against them. For many, language, accent and appearance play an important role in signaling their foreignness and triggering xenophobia. Surprisingly, too, is the fact that non-South Africans are not of the view that the Bill of Rights is adequate to remedy xenophobic attitudes.

#### **4.5. Findings: The Influence of ‘Residential Location’ on Xenophobia.**

For foreigners, residential patterns of living in South Africa are largely connected to issues of safety and security.<sup>157</sup> The general groupings of the respondents are reflected in ‘clusters’ of nationalities within certain areas. Living space-clusters serve not only to ease the social transition from foreigners; they also serve as a defense against the hostility and crime that foreigner’s in South Africa face.

From the study, it is evident that there is a high level of understanding of the concept of ‘xenophobia’ amongst both rural and urban residents although urban residents are more conversant with the concept. The study also shows that xenophobia is still perceived as a problem in the NWP. Both classes of respondents shared this view.

Another finding of the study is that xenophobia exists in both rural and urban areas in that both rural and urban respondents had experienced xenophobic attitudes towards them from each other, however, it is more prevalent in urban areas as expected it would be.

The study also indicates that Government is not doing enough to get over xenophobia in the NWP and further that the provisions of the Bill of Rights are certainly not enough to remedy the fear of the unknown (xenophobia).

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<sup>157</sup>Human Rights Watch Ibid, n.156 at P18.

#### 4.6. Summary.

In this chapter, the findings of chapter three have been examined. The following views and observations are depicted:

- i. Racial discrimination still exists in the NWP.
- ii. That racial discrimination is triggered by an individual's 'race' and not much as by nationality.
- iii. Xenophobia is influenced by one's race, although only to a minimal extent.
- iv. One's nationality also influences xenophobic tendencies

In essence, therefore, racial discrimination and xenophobia are prevalent in the NWP.

## CHAPTER FIVE:

## Summary, Conclusion and Recommendations.

### 5.0. Summary.

This dissertation has been concerned with the issues of racial discrimination and xenophobia. It sought to examine these issues in the context or against the background of South Africa's historical record of discrimination. The concepts of equality and discrimination have been dealt with to throw light on the meaning and impact of the Bill of Rights on discrimination in the NWP.

Reference has been made to the African concept of ubuntu as understood by South Africa. The constitutional protection of equality as provided for by Section 9 of the Constitution of the Republic of South Africa has also been dealt with.

International conventions and treaties have been referred to where relevant.

The guarantee of equality as provided for by the equality clause is gradually reaching its meaning, however, the realistic guarantee of equality depends, to a large extent, on the attitudes of the individuals within society and their drive towards realizing their differences and working on such difference to ensure the eventual realization of equality for all without any distinction.

## 5.1. Conclusion.

The findings of this dissertation suggest two broad areas through which to understand 'discrimination' (racial and xenophobic), in contemporary South Africa, namely:

- The racial grouping of people in the province.
- The nationality of residents in the province.

Within each of these areas blacks, whites and foreigners in the NWP face particular challenges and difficulties. Developing solutions and sustainable interventionist strategies is not an easy task, particularly because incidents of racism and xenophobia take place within a broader context of hostility.

These contexts facilitate violations and abuse of the equality clause at a number of different sites. Their multiplicity and breadth of diffusion renders these sites difficult to control, patrol and monitor, particularly because many abuses and violations of the equality clause are supported by strong financial interests and certain political objectives.

Additionally, 'the foreign experience' and racial discrimination cannot be divorced from the high levels of violence within South Africa, nor can they be isolated from the country's history of racism and other forms of discrimination.

The existence of the Bill of Rights does not show a clear-cut adherence to its provisions. Foreigner's still experience xenophobic attitudes towards them, blacks and whites, a like also still discriminate against each other. The forms of discrimination seem to have gone beyond the issue of race it stretches as far as being discriminated against because of where an individual resides.

Perhaps it is not enough to have a set of rights on paper guaranteed to individuals when the very drafters of those rights do not adhere to them. The most significant impact that the Bill of Rights has had on the rights to equality is the creation of awareness.

The Bill of Rights provides a mechanism to ensure that individuals are aware of their rights and the possible fora to consult should such rights be infringed. The only problem is that there are still a number of people who do not know about their rights, perhaps not even the Bill of Rights, it is this minority group that are prone to being discriminated against or possibly even discriminate against others.

## 5.2. Recommendations.

As this analysis illustrates, racial discrimination and xenophobia are a product of historical factors.

They do not exist separately from other manifestations of discrimination but symbolize continuity, as well as change, from previous and contemporary forms. Thus, the prevention of discrimination and victim empowerment strategies need to engage with the specifics of the discrimination generally.

It is crucial that the findings of this research should be fed into existing discrimination prevention and victim empowerment programmes. They must be developed into sustainable interventionist strategies in consultation with relevant stakeholders; including those working generally with the prevention of these forms of discrimination and victim empowerment in the NWP.

A holistic model of intervention needs to be generated for tackling the unique challenges facing the prevention of discrimination whilst simultaneously integrating whites, blacks foreigners and all other stakeholders into the North West approach to the prevention of racial discrimination and xenophobia.

This model must be complemented with on going evaluation and monitoring as well as further research into discrimination based on race and national origin. Existing and possible areas for intervention and research include the following;

### 1. Training.

- Aimed at frontline workers (e.g. South African Police Service, Department of Home Affairs, educational authorities.).
- Legal knowledge to prevent discrimination through ignorance.

2. **Informing Policy and Provincial Debates.**

- Awareness raising and education about other races and the plight of foreigners in South Africa.
- Informing effective policy decisions about cross-border movements.
- Anti-racism advocacy, initiatives, policies and programmes that are effective.
- Feeding public debate about xenophobia.

3. **Research.**

- Researching and developing a trauma model appropriate to the needs of foreigners in South Africa.
- Evaluation research of existing and planned intervention strategies.

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## APPENDIX

### RESEARCH QUESTIONNAIRE

Dear Respondent

I am a student at the University of North West pursuing a degree of Master of Laws (LLM). I am currently conducting a research survey in partial fulfillment of the requirements for the said degree. The topic under study is as follows:

**The impact of the South African Bill of Rights on discrimination and the search for equality.**

The research will focus on racial discrimination and xenophobia in the NorthWest province.

### OBJECTIVE OF THE STUDY

The specific objective of the study is to determine:

- i. The level of racial discrimination and xenophobia in the North West province.
- ii. The causes of these forms of discrimination and their possible solutions, if any.

**NB:** The primary purpose of this exercise is purely academic therefore respondents are earnestly requested to respond fairly and honestly to questions. Information provided by respondents will be treated in high confidentiality.

**You may not disclose your identity.**

Your anticipated co-operation in this regard will be highly appreciated.

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FUNNAH A K

TEL: (018) 389 2027 (w) / 082 764 1778

FAX: (018) 386 2686

### **INSTRUCTIONS**

- 1) Indicate your response by marking with an "X" next to the question.
- 2) Answer all questions in each section.
- 3) Use ink-pen, not pencil.
- 4) Completed questionnaires should be returned to the person who issued out this questionnaire, alternatively you might call me at the provided number to collect them.
- 5) Completed questionnaires should be returned no latter than 14<sup>th</sup> September 2001.
- 6) \* UTJ- Unable to judge.

### **SECTION ONE**

(Questions to determine your perceptions about racial discrimination)

	YES	NO	UTJ
1.1. Do you have a problem with other races?			
1.2 Do you indulge in activities with other races? (Work related or socially)			
1.3 Do you believe white people are more productive than black people			
1.4 Do you feel that white children and black children should be left to play together In parks.			
1.5 Have you ever been a victim of racism in the North West Province			
1.6 Do you think we can ever achieve a non racist society in the province			
1.7 Do you feel the government is doing enough to curb racism in the province			
1.8 Are the provisions of the Bill Of Rights adequate to eradicate racism			

## **SECTION TWO**

(Questions to determine your perception about Xenophobia)

	YES	NO	UTJ
2.1 Do you know what Xenophobia is?			
2.2 Do you believe Xenophobia is a problem in the North West Province?			
2.3 Are you Xenophobic?			
2.4 Have you ever been a victim of Xenophobia?			
2.5 Do you believe that Institutions of government, e.g. The Department of Education, employ people based on their ethnic originality rather than the Qualifications they possess.			
2.6 Do you prefer white people from other countries over black people from other Countries.			
2.7 Do you think the south African government is doing enough to get over the Fear of the unknown. (Xenophobia)			
2.8 Are the provisions of the Bill of Rights enough to remedy Xenophobia?			

## **SECTION THREE**

(Information relating to biographical data)

**NB:** Although the survey is anonymous, please indicate your appropriate position with a view to facilitate more accurate analysis of information provided by the respondent.

### **3.1. Job Title**

Secretarial	
Administration	
Academic	
Student	
Other: specify	

**3.2. AGE GROUP**

15-20 YRS	
21-25 YRS	
26-30 YRS	
31-35 YRS	
36-40 YRS	
40-ABOVE	

**3.3. RESIDENTIAL AREA**

Rural Area	
Urban Area	

**3.2. RACE**

White	
Black	
Other: Specify	

**3.5. NATIONALITY**

RSA	
Other: Specify	

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