



# The State of Intolerance and Discrimination in South Africa

2017-2019

FOUNDATION FOR HUMAN RIGHTS



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The opinions expressed in this publication are those of the authors. They do not purport to reflect the opinions or views of the Department of Justice and Constitutional Development or the European Union.

The research was conducted in 2019 and finalised in early 2020, and hence the report and associated annexes should be read with this in mind.

The present report builds on the overall study and detailed research outputs that can be accessed via the FHR website at [www.fhr.org.za](http://www.fhr.org.za):

- Annex 1: The Level of Intolerance and Discrimination – Attitudinal Surveys
- Annex 2: The Level of Discrimination – Administrative Data
- Annex 3: Justice and Human Rights System Response to Racism, Xenophobia and Other Forms of Intolerance and Discrimination
- Annex 4: Review and Assessment of Governmental Departments
- Annex 5: Analysis of the 25 Year Review as Published by Government
- Annex 6: The Levels of Perceived, Experienced and Reported Discrimination (2017 – 2018)
- Annex 7: Baseline Checklist – Intolerance and Discrimination
- Annex 8: Alignment of Strategic Plans and Annual Reports with the NAP
- Annex 9: Information about the Attitudinal Surveys used in the Study
- Annex 10: Terminology



## Message from the Deputy Minister of Justice and Constitutional Development the Hon JH Jeffery, MP

We will soon be celebrating the 25th anniversary of the Constitution.

As we review our progress over these last 25 years, we can see that we have made significant progress in addressing the imbalances of the past and improving the quality of life of all citizens.

But more needs to be done.

To overcome more than 300 years of conquest, colonialism and apartheid will take a concerted effort from all South Africans, especially those who are beneficiaries of the past. Some in our country seem to forget how far we have come as a nation. They take it for granted, and within their hearts and minds still live feelings of racial superiority, built on the mistaken belief that others are not worthy of the same basic respect and human dignity that our Constitution guarantees.

The study which has been undertaken by the Foundation for Human Rights is extremely important, as it shows us the varying levels of intolerance in our country.

According to the findings, discrimination based on race is the most common type of discrimination and was reported by higher rates among men and people in urban areas. One in every five South Africans reported that racism affects their daily lives ‘always’ or ‘often’ in the workplace or place of study, followed by commercial and retail spaces, recreational spaces, social gatherings and events, and on public transport.

Equally important is issues of nation-building and reconciliation. The findings of the study indicate that a large majority (about 62%) have difficulties associating themselves with other race groups. Even though white respondents indicate that they have no problem associating with any other race group, they were the least approving of integration. They were also the most frequently mentioned as those who are the most difficult to associate with.

But racism is not the only form of intolerance – discrimination and prejudice come in many forms and permutations, be it homophobia, xenophobia or any other form of intolerance.

Discrimination, coupled with poverty and inequality, remains one of the biggest challenges facing our country. It is a threat to our constitutional democracy and a barrier to the attainment of human rights for all.

This study shows that we still have a long way to go in terms of confronting and eradicating all forms of intolerance.

**JH Jeffery, MP**  
**Deputy Minister of Justice and Constitutional Development**

## Foreword by Mr Hanif Vally Executive Director of the Foundation for Human Rights

We are celebrating the twentieth anniversary of the adoption of the Durban Declaration and Programme of Action flowing from the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held from 31 August to 8 September 2001 in Durban, South Africa.

The Declaration and its Programme of Action represented a road map for the international community of the path to be taken to address ending and preventing future manifestations of racism, racial discrimination, xenophobia and related intolerances.

It has particular resonance for the people of South Africa who have survived a cruel and grotesque history of slavery, colonialism and its more modern manifestation of apartheid. Apartheid was designed to oppress, exploit and halt the development of the indigenous peoples and other persons who had endured colonialism emanating from the colonising North. The Foundation for Human Rights' initial objective in its establishment in 1996 was to address the legacy of apartheid.

This study focuses on the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Other Intolerances (NAP) adopted in 2019 in South Africa to give effect to the recommendations emanating from the said World Conference.

The tools recommended from the robust debates to deal with this scourge of racism were educational and awareness-raising measures to ensure equality in the fields of employment, health and the environment, among others. The need to have accurate data collection and research was identified in the NAP as an important prerequisite for taking corrective measures.

The inadequacy of the available data to identify problem areas which needed to be addressed was patent from this desk-top study. It found that a uniform set of data collection needs to be adopted and implemented.

Considering that this study focused predominantly on a number of different sources of existing data on discrimination and intolerance, there are a number of recommendations that are geared towards enhancing the collection of data to guide the implementation of the NAP. The study finds that there is insufficient collation of data inquiring into discrimination on grounds of sexual orientation, language, nationality, disability, ethnicity, age and socio-economic status. Whilst these are all problematic, it is in developing tools to address sources of pernicious xenophobic and homophobic violence that this lack of data is most damaging.

This initial study, together with the NAP and other pro-active steps, must be the beginning of a process which will put an end to the state of intolerance and discrimination in South Africa. Racism should be criminalised. We owe it to our ancestors and all persons who have suffered under the yoke of racism, racial discrimination, xenophobia and related intolerances in South Africa.

**Hanif Vally**  
**Executive Director**  
**Foundation for Human Rights**  
*October 2021*

## A note from Katarzyna Zdunczyk

The Foundation for Human Rights (FHR) played a critical role during the drafting process of the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance (NAP). Ms Yasmin Sooka, the FHR Executive Director at the time, co-chaired the NAP Drafting Committee and played an integral role in ensuring that the process was genuinely inclusive and participatory.

When the decade-long process was coming to an end in 2018, one felt fatigued but simultaneously excited that South Africa would finally have a progressive and comprehensive policy guiding its anti-racism, anti-xenophobia and anti-discrimination strategies, which could become the driving force behind the much-needed inclusive transformation.

From the very beginning, however, it was clear that the design and efficient implementation of the interventions aimed at giving effect to the NAP would only be possible if supported by comprehensive and in-depth data, research and evidence. Hence, a regular reflection on the levels of intolerance and discrimination within South African society is a key intended output of the NAP, and the FHR was asked by the Department of Justice and Constitutional Development to assist with the first iteration of the study.

South Africa has a wealth of survey and administrative data on racism, xenophobia and other forms of intolerance and discrimination, but these are often uncoordinated and inaccessible. One component of this study was to assess the completeness of this data and to identify areas that required further interventions.

When embarking on the study towards the end of 2019, we soon realised that covering all aspects related to the ‘levels of intolerance and discrimination in South Africa’ was not viable. We decided to narrow down our research to the analysis and compilation of results from the most recent and relevant attitudinal surveys and to government responses aligned with the NAP. The idea was that other significant aspects such as criminal offences motivated by discriminatory attitudes and prejudices, hate speech and hate crimes perpetrated (including via social media), or intolerance and discrimination within the private sector or civil society would be left to subsequent studies.

In conducting the research, I was joined by two extremely talented researchers, Ms Chido Muzanhamo and Ms Katherine Brown, and I would like to thank them for their excellent work. We were guided by the invaluable and substantial inputs of Dr Zaid Kimmie who conceptualised and oversaw the project.

**Katarzyna Zdunczyk**  
**Senior Researcher**  
**Foundation for Human Rights**

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# Abbreviations

<b>AU</b>	African Union
<b>CGE</b>	Commission for Gender Equality
<b>CJCP</b>	Centre for Justice and Crime Prevention
<b>DBE</b>	Department of Basic Education
<b>DDPA</b>	Durban Declaration and Programme of Action
<b>DHET</b>	Department of Higher Education and Training
<b>DOJ&amp;CD</b>	Department of Justice and Constitutional Development
<b>DPME</b>	Department of Planning, Monitoring and Evaluation
<b>FHR</b>	Foundation for Human Rights
<b>GBV</b>	Gender-Based Violence
<b>HSRC</b>	Human Sciences Research Council
<b>MTSF</b>	Medium-Term Strategic Framework
<b>NAP</b>	The National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance
<b>NDP</b>	The National Development Plan
<b>NOC</b>	NOC - National Operation Centre
<b>NPA</b>	National Prosecuting Authority
<b>NTT</b>	National Task Team on Gender and Sexual Orientation-Based Violence Perpetrated Against LGBTI+
<b>PEPUDA</b>	Promotion of Equality and Prevention of Unfair Discrimination Act, 2000
<b>PTTs</b>	Provincial Task Teams on Gender and Sexual Orientation-Based Violence Perpetrated Against LGBTI+
<b>SAFLII</b>	Southern Africa Legal Information Institute
<b>SAHRC</b>	South African Human Rights Commission
<b>SAPS</b>	South African Police Service
<b>SARB</b>	South African Reconciliation Barometer
<b>SASAS</b>	South African Social Attitudes Survey
<b>SASQAF</b>	South African Statistical Quality Assurance Framework
<b>SDGs</b>	Sustainable Development Goals
<b>SEJA</b>	Socio-Economic Justice for All
<b>Stats SA</b>	Statistics South Africa
<b>WCAR</b>	World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance

# 1. Introduction



## 1 Introduction

The National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance (NAP) and its Implementation Plan were approved by the Cabinet in February 2019<sup>1</sup>, and in March 2019, it was officially launched by the South African government. By adopting the NAP, South Africa has honoured its commitment made during the 3rd World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR), which was incorporated into the Durban Declaration and Programme of Action (DDPA, 2001). In signing the DDPA, South Africa agreed to ‘establish and implement without delay national policies and action plans to combat racism, racial discrimination, xenophobia and related intolerance, including their gender-based manifestations.’<sup>2</sup>

The NAP represents a key component of the equality framework that governs the country. Under international law and in line with the South African Constitution, the government is obliged to ensure equality and non-discrimination of all people living in South Africa. South Africa’s Constitution, and particularly its Bill of Rights<sup>3</sup>, enshrines the rights of all people to live in the country based on the democratic values of human dignity, equality, and freedom. It further posits that the state is responsible to safeguard, secure and fulfil the rights in the Bill of Rights, which is the cornerstone of fundamental rights and provides a general framework for non-discrimination and equality in South Africa.

### 1.1 South Africa’s equality framework and the adoption of the NAP

The equality framework established in the Constitution is complemented by relevant legislation, in particular the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (PEPUDA) which outlaws unfair discrimination in all aspects of society and explicitly states prohibited grounds for discrimination, while also setting up divisions of the High Court and assigned Magistrates’ Courts as ‘Equality Courts’. Individuals who are subjected to any form of discrimination or prejudicial treatment can raise their grievances before these Equality Courts. To achieve equity in the workplace, eliminate unfair discrimination and implement affirmative action

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<sup>1</sup> Department of Justice and Constitutional Development (2019), “Cabinet approves the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance (NAP)”, available at [https://www.justice.gov.za/m\\_statements/2019/20190228-NAP.html](https://www.justice.gov.za/m_statements/2019/20190228-NAP.html), (accessed 11 July 2021).

<sup>2</sup> Office of the High Commissioner for Human Rights (2002), World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, (New York: United Nations Department of Public Information), Section 66, p.68.

<sup>3</sup> The Constitution of the Republic of South Africa, 1996. Chapter 2: Bill of Rights, Section 7, available at <https://www.justice.gov.za/legislation/Constitution/SACConstitution-web-eng.pdf>,(accessed 11 July 2021).

<sup>4</sup> Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, available at <https://www.justice.gov.za/legislation/acts/2000-004.pdf>, (accessed 11 July 2021).

measures to redress employment disadvantages, the government has also adopted the Employment Equity Act, 1998.<sup>5</sup>

The equality and non-discrimination framework in South Africa is further strengthened through obligations deriving from international treaties, customary international law and regional human rights instruments. As a nation committed to upholding human rights, South Africa has voluntarily ratified or acceded to most of the key international and regional human rights instruments. The country has also embraced the ideals of equality and non-discrimination as contained in the Sustainable Development Goals (SDGs) adopted by all United Nations Member States in 2015. Importantly, as a widespread call of action to end impoverishment, protect the planet, and guarantee that all individuals enjoy peace and prosperity by 2030, the SDGs specify targets for the achievement of gender equality (Goal 5); quality education (Goal 4), including gender equality in education; and reduced inequalities (Goal 10), among others. Other than the SDGs, African nations have resolved to implement the African Union (AU) Agenda 2063, which is a plan to create a progressively prosperous Africa in 50 years. The 2030 Agenda for Sustainable Development recognises the significance of the AU Agenda 2063 as an important component of its own goals.<sup>6</sup>

In its efforts to effectively implement an equality and non-discrimination framework, the government is further guided by overarching strategic policies, particularly the National Development Plan (NDP), which seeks to eradicate poverty and significantly decrease inequality by 2030. The NDP aims to do so through six interconnected priorities that rally South Africans around a mutual agenda. These priorities are: uniting all South Africans around a common programme to achieve prosperity and equity; promoting active citizenry to strengthen development, democracy and accountability; bringing about faster economic growth, higher investment and greater labour absorption; focusing on key capabilities of people and the state; building a capable and developmental state; and encouraging strong leadership throughout society to work together to solve problems.<sup>7</sup> The NDP acknowledges that poverty and inequality need to be addressed by broadening economic inclusivity and promoting and upholding constitutional values to establish a socially cohesive South Africa.<sup>8</sup> Furthermore, the NDP concedes that while gradual de-racialisation has been achieved through previous efforts by the South African democratic government to address unequal socio-economic patterns, there is still progress to be made.<sup>9</sup> Finally, the NDP

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<sup>5</sup> National Action Plan (NAP) to combat Racism, Racial Discrimination, Xenophobia and Related Intolerance (2019), available at [https://www.gov.za/sites/default/files/gcis\\_document/201903/national-action-plan.pdf](https://www.gov.za/sites/default/files/gcis_document/201903/national-action-plan.pdf), (accessed 11 July 2021), p.19.

<sup>6</sup> United Nations Development Programme South Africa (n.d), "The global goals in Africa", available at [https://www.za.undp.org/content/south\\_africa/en/home/sustainable-development-goals.html](https://www.za.undp.org/content/south_africa/en/home/sustainable-development-goals.html), (accessed 11 July 2021).

<sup>7</sup> National Planning Commission (2012), Our Future Make it Work - National Development Plan 2030. Executive Summary, <https://www.gov.za/sites/default/files/Executive%20Summary-NDP%202030%20-%20Our%20future%20-%20make%20it%20work.pdf>, (accessed 11 July 2021), p.16.

<sup>8</sup> Ibid, p.25.

<sup>9</sup> Ibid.

seeks to address factors such as patriarchy and other obstacles that persistently exclude women from full participation in society, by identifying key priorities that will have a lasting effect on women.<sup>10</sup>

The government has been further guided by the Medium-Term Strategic Framework 2014-2019 (MTSF), which aims to give effect to the NDP and underlines government's obligations in terms of actions and targets to be implemented locally, provincially and nationally.<sup>11</sup> The 'new' MTSF is organised around 7 priorities which address key areas highlighted in the NDP and form part of government's electoral mandate. The MTSF's Priority Six emphasises nation building and social cohesion.<sup>12</sup> The government's new MTSF for 2019-2024, unlike the MTSF 2014-2019, considers the NAP, and incorporates it within the framework for the effective implementation of the NDP. In particular, the MTSF states that effective coordination efforts to implement the NAP will allow the achievement of the NDP's outcome of equal opportunities, inclusion, and redress.

The constitutional, legislative and policy regulations collectively constitute the primary equality and non-discrimination framework for government's plan to address inequalities and discrimination nationally. However, this equality framework is limited as it focuses on the immediate outcomes of discrimination (e.g. increased numbers of disadvantaged or marginalised individuals in under-represented sectors of society) or addresses individual instances of discrimination (e.g. complaints before the South African Human Rights Commission (SAHRC) or Equality Courts), without sufficiently considering systemic discrimination entrenched in people's attitudes and behaviours, including those who occupy positions within the state. This equality framework is also predominantly centred on the government as the key duty-bearer without sufficiently acknowledging the role of civil society and the private sector in what should be a 'whole of society' approach towards dealing with inequality, discrimination, and intolerance.

Viewed against these shortcomings, the adoption of the NAP is meant to address the limitations of the existing equality framework by introducing a holistic national approach in efforts to combat intolerance and discrimination. Accordingly, the NAP should be treated as a tool to coordinate efforts by the government, civil society and private sector in addressing inequality and discrimination, with a focus on strategies and measures that consider the root causes of systemic inequality and discrimination. In doing so, however, as much as the approach to be adopted is a holistic one, successful implementation of the NAP requires a more concerted effort within government, as the primary duty-bearer, to coordinate planning across departments, enhance its capacity to work collectively and recognise that interventions need commitment to longer-term processes to which all government departments, and not just a few, contribute.

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<sup>10</sup> Ibid.

<sup>11</sup> Government of South Africa (2014), Medium Term Strategic Framework (MTSF) 2014-2019, [https://www.gov.za/sites/default/files/gcis\\_document/201409/mtsf2014-2019.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/mtsf2014-2019.pdf), (accessed 11 July 2021), p.4.

<sup>12</sup> Ibid.

# 2. Purpose of the study

## 2 Purpose of the study

The NAP commits all sectors of our society to the promotion and protection of human rights, and to raising awareness of anti-racism, equality and anti-discrimination issues. In addition to calling for partnerships, it also emphasises the importance of collecting data regarding racism and discrimination to combat these problems and improve interventions. In this regard, a key intended output of the NAP is regular reflection on the levels of intolerance and discrimination within South African society. This includes information on the prevalence of intolerance and discrimination; documentation of policies and programmes implemented by government, civil society and business to combat intolerance; an assessment on the extent of the effectiveness of these policies and programmes; and the identification of areas that require urgent attention.

The report arising from this study represents an initial attempt to contribute to understanding the scale of the problem based on available data, as well as assessing the effectiveness of the national government response to the problem, as a base to guide future implementation of the NAP. The report relies on recent available data spanning the period from 2017 to 2019, and aims to provide a useful summary of existing data and research on intolerance and discrimination. In the long term, the report would benefit from being updated regularly (perhaps annually) to provide an accurate reflection of progress made in dealing with intolerance and discrimination, and in the alignment of government interventions to the NAP.

### 2.1 A note on interpretation

Given its focus on the NAP, the report relies on key concepts as understood in relation to the NAP. In particular, it provides information in relation to both discrimination and intolerance. Discrimination should be understood to refer to any act or omission, including any policy, law, rule, practice, condition or situation which directly or indirectly: (a) imposes burdens, obligations or disadvantage on; or (b) withholds benefits, opportunities or advantages from, any person on one or more of the prohibited grounds.<sup>13</sup> The concept of discrimination as referred to in this report, applies to ‘unfair discrimination’, which is the discrimination based on the prohibited grounds as stipulated in law and that is ‘unfair’ in light of South African law and context.<sup>14</sup> It includes the forms of practice, conduct and outcomes.

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<sup>13</sup> See National Action Plan (NAP) to combat Racism, Racial Discrimination, Xenophobia and Related Intolerance (2019), op cit., p.7.

<sup>14</sup> See PEPUDA, op cit., Section 14 that deals with fairness and unfairness of discrimination.



**Intolerance** refers to the refusal to accept ideas, beliefs, or behaviour that differ from one's own<sup>15</sup> based on prejudice toward groups, usually groups with which one does not associate. In this report, intolerance refers to people's attitudes and perceptions of other people, groups and interactions as well as legal, social, economic and political issues that are based on prejudice. Intolerance is also referred to as 'perceived discrimination'. While in most instances, intolerance or hostile attitudes will remain only as an intent or a belief, they may develop into conduct that amounts to actual discrimination, harassment, or violence.

The practice, behaviour or outcomes of intolerance can manifest in unjust discrimination, harassment or hate speech that is prohibited by PEPUDA. These are the defined forms of conduct or behaviour that are prohibited under PEPUDA, and if committed, can result in a complaint being filed before the Equality Courts. Under Section 21(2)(n) of PEPUDA, an Equality Court can submit the matter to the National Director of Public Prosecutions, with jurisdiction for possible criminal proceedings in terms of common law or relevant legislation. PEPUDA defines prohibited grounds as race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth; or any other ground that causes or perpetuates systemic disadvantage; undermines human dignity; or adversely affects the equal enjoyment of a person's rights and freedoms.

A discriminatory behaviour committed with a necessary intent can also amount to a criminal conduct and can therefore be a criminal offence under common law or relevant legislation. Such a criminal conduct or behaviour, motivated by and/or committed based on any of the described discriminatory characteristics, is likely to be investigated and prosecuted under common law or relevant legislation as *crimen injuria*, defamation, or any other applicable criminal offence. This means that discriminatory conduct will be 'wrongly' coded, for instance as an assault, without specifying whether the context such as xenophobia or racism occurred. While the motivation may be reflected in court documents and judgments, it is unlikely to appear in police or prosecutorial statistics.

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<sup>15</sup> Cambridge Dictionary, "Intolerance", available at <https://dictionary.cambridge.org/dictionary/english/intolerance>, (accessed 11 July 2021).

In order to overcome some of the difficulties associated with investigating and prosecuting hate crimes, the government has developed the Hate Crime and Hate Speech Bill. However, the Bill is yet to be enacted as the process of its adoption has effectively stalled. The Bill provides for new categories of criminal offences (i.e. hate crime and hate speech) including special reference to ‘prejudicial’ or ‘intolerant’ motivation towards a victim. This ‘prejudicial’ or ‘intolerant’ motivation must be based on one or more characteristics listed in the draft bill which encapsulates the basis for discrimination. This establishment of a stand-alone category of crime that will be easy to code into police and prosecutorial statistics will facilitate data collection on discrimination.

## **2.2 Limitations of the study**

As a first iteration, this report relies on existing data and generally available information on different forms of discrimination and intolerance to provide as comprehensive a picture as possible. As such, it contains a number of limitations that need highlighting.

Firstly, the study does not incorporate data on social media or advertising. We acknowledge the necessity of a study on the levels of intolerance and discrimination as reflected in social media, in the face of its growing power in shaping people’s minds and attitudes, particularly those of the youth. Such a study requires dedicated in-depth research supported by technical expertise in social media monitoring and analysis which was not readily available. This also applies to the impact of advertising, which is a critical sector that has the power and resources to influence how people think and interact with each other.

Secondly, the study does not include data from criminal cases reported to the South African Police Service (SAPS) and taken up by the National Prosecuting Authority (NPA). Ideally, the number of cases related to racism, xenophobia and other intolerances reported to SAPS should be analysed against the number of cases brought

to courts and their outcomes. However, there is no single depository that would allow access to this data. Further, the statistics compiled by the SAPS, NPA and courts unfortunately do not provide sufficient information about the nature of the crime and motivation. Motivation, in particular, is critical to classifying a crime as a hate crime.

Thirdly, the study focuses broadly on the prevalence of intolerance and discrimination in the country based on existing data. It does not analyse levels of intolerance and discrimination in specific sectors, namely the private sector or civil society. The reason for this is two-fold: firstly, analysing the general prevalence of intolerance and discrimination in South Africa must be the starting point for further research; secondly, detailed studies of the private sector or civil society require their own specific research which are beyond our present scope and should inform future research endeavours.

Fourthly, in aiming to provide as comprehensive a picture of the prevalence of intolerance and discrimination as possible, the study relies on an analysis of existing multiple attitudinal surveys. However, caution is required in interpreting the findings as the existing data from the surveys have been collected using different methodologies and various analytical processes. Care has been taken to identify discrepancies across surveys as well as to include cross-survey comparisons.

Fifthly, as much as the study provides an analysis of cases brought before Equality Courts, such cases are not reflective of the prevalence of discrimination and intolerance in South Africa. Equality cases do not necessarily need to be brought before the Equality Courts but can be filed in different courts. Consequently, in the long term, research should include a review of the cases before the High Courts, Supreme Court of Appeals and the Constitutional Court, which relate to the violation of the right to equality.

Lastly, the review of government departments' Strategic Plans and Annual Reports was done through a NAP lens and is not intended to assess the overall effectiveness or appropriateness of departmental strategies and plans. Further, a significant part of this assessment vis-à-vis the NAP has been conducted based on available government department reports, and it is therefore possible that some government departments' interventions might be more extensive than what has been included in these reports. Similarly, these reports may differ in terms of the level of detail contained therein and therefore comparisons between the different departments must take this factor into account.

# 3. Components of the study and methodological approach

### 3 Components of the study and methodological approach

In order to provide an overall picture of existing data and research on intolerance and discrimination within the scope of the NAP as set out above, this report relies on existing statistical data from a variety of sources, and on responses by government and independent bodies to address different dimensions of intolerance and discrimination in South Africa. The present study is made up of five components, for which different qualitative and quantitative methodologies were used, as described below:

1. Analysis of statistical data from attitudinal surveys
2. Administrative data in relation to education and employment
3. A review of responses by justice system and other independent bodies
4. A review and assessment of strategic plans and annual reports
5. A review of the Towards a 25-Year Review: 1994-2019 <sup>16</sup> document.

#### 3.1 Analysis of statistical data from attitudinal surveys

For purposes of statistical analysis, the study relies on data from five different attitudinal surveys conducted between 2017 and 2019 (for details see Annex 9), namely:

- The 2017 Foundation for Human Rights (FHR) Survey on Constitutional Awareness (hereafter ‘2017 FHR Survey’)<sup>17</sup>
- The 2018/19 Governance, Public Safety and Justice Survey by Statistics SA (hereafter ‘Stats SA 2018/19 Survey’)<sup>18</sup>
- The 2017 South African Reconciliation Barometer produced by the Institute for Justice and Reconciliation (hereafter ‘2017 SARB’)<sup>19</sup>
- The 2018 Afrobarometer Survey,<sup>20</sup> and

<sup>16</sup> Department of Planning, Monitoring and Evaluation (2019), Towards a 25 Year Review (1994-2019): 25 Year Review Report, available at [https://www.gov.za/sites/default/files/gcis\\_document/201911/towards25yearreview.pdf](https://www.gov.za/sites/default/files/gcis_document/201911/towards25yearreview.pdf), (accessed 12 July 2021).

<sup>17</sup> We have largely relied on the data analysis contained in the Foundation for Human Rights (FHR) and Department of Justice and Constitutional Development (DOJ&CD) report entitled Socio-Economic Justice for All (SEJA) Baseline Report (2018), available at <https://www.fhr.org.za/2018/01/20/seja-baseline-survey-report/>, (accessed 2 July 2021). Even though the report was formally published in January 2018, we will refer to this report as the “2017 FHR Survey” since the bulk of the work was completed in 2017.

<sup>18</sup> We have relied on the data analysis contained in the report: Statistics South Africa, Governance, Public Safety and Justice Survey - GPSJS 2018/19, 2019, available at <http://www.Stats SA.gov.za/publications/P0340/P03402019.pdf>, (accessed 2 July 2021). Hereinafter “2018/19 Stats SA Survey”.

<sup>19</sup> The study was conducted at a time when the report from the 2019 IJR SA Reconciliation Barometer was not yet available. For this reason, this study relies on data from the 2017 survey. In the study, we refer both to the analysis contained in the IJR 2017 Report: Elnari Potgieter, South African Reconciliation Barometer Survey: 2017 Report, Institute for Justice and Reconciliation (hereinafter “2017 SARB Survey”), p.16, available at <https://www.ijr.org.za/portfolio-items/south-african-reconciliation-barometer-survey-2017-report/> (accessed 2 July 2021); and our own analysis of the data from the 2017 survey: 2017 Data Set – The South African Reconciliation Barometer (SARB), available at <https://www.ijr.org.za/resources/sarb-oda-analysis/>.

<sup>20</sup> We have relied on the data contained in the report: Afrobarometer, Summary of Results – Afrobarometer Round 7, Survey in South Africa, 2018, Plus 94 Research (hereinafter “2018 Afrobarometer Survey”), pp.50-51, available at [https://afrobarometer.org/sites/default/files/publications/Summary%20of%20results/saf\\_r7\\_sor\\_13112018.pdf](https://afrobarometer.org/sites/default/files/publications/Summary%20of%20results/saf_r7_sor_13112018.pdf) (accessed 2 July 2021).



- The 2017 South African Social Attitudes Survey (hereafter ‘2017 SASAS’) produced by the Human Sciences Research Council (HSRC).<sup>21</sup>

The study included both primary and secondary data analysis. Primary data sources were analysed where possible, predominantly for the 2017 SARB and 2017 SASAS Surveys. Raw data from the 2017 SASAS survey was obtained from the HSRC and analysed independently by the research team. The review and analysis of secondary data sources, including survey narrative reports, derives mainly from the 2017 FHR and Stats SA 2018/19 surveys.

### **3.2 Research of administrative data in relation to education and employment**

This second component of the study combines a desk review of Rajen Govender’s report titled ‘The Analysis of Methods of Data Collection on Incidents of Racism, Racial Discrimination, Xenophobia and related Intolerance’ and quantitative analysis of administrative data on employment and education. Govender’s report was commissioned by the Department of Justice and Constitutional Development (DOJ&CD) in 2017 to research available data related to South Africa’s national and international legal obligations and mandates to combat discrimination, as well as its collection methods.

Since the research was focused on employment and education, Govender’s report has been used as a base to inform the primary providers of information nationally in these fields: Statistics South Africa (Stats SA) and the Departments of Basic Education (DBE) and Higher Education and Training (DHET). During the course of the study, when the needed information was not immediately available, the researchers contacted Stats SA for the requested data. The selected data relate to employment and education broadly as these are two key areas of data available in South Africa, and the data are compared to the figures of ten years ago to indicate the progress or lack thereof in these areas.

### **3.3 Review of responses by justice system and other independent bodies**

This third component provides an analysis of statistical information on the number and nature of cases, and an analysis of some individual cases that have been reported to the Equality Courts. The data analysis on the

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<sup>21</sup> We obtained a data set from the 2016 HSRC survey and conducted internal analysis (hereinafter ‘2017 SASAS’).

Equality Courts is based on desktop research of existing secondary sources, particularly the report by Melanie Judge and Erica Emdon, 'A Snapshot of the Use of South Africa's Equality Courts' published in July 2018, and the National Operation Centre (NOC) Annual Report 2018/19 for the Equality Courts which includes data for 2017/18 and 2018/19. These data are complemented with data on the Equality Courts obtained from Annual Reports and other documents from the SAHRC and the Commission for Gender Equality (CGE). Equality Court data also incorporates an analysis of cases finalised in 2018 and 2019, as reported on the Southern Africa Legal Information Institute (SAFLII) portal. Case summaries were developed and relevant information on the nature of cases was extracted (see Annex 3 for more details).

This component also includes an analysis of statistical information on cases reported to two Chapter 9 institutions, namely the SAHRC and the CGE, as well as cases reported through the National Task Team on Gender and Sexual Orientation-Based Violence Perpetrated Against LGBTI+ (hereinafter NTT) to address instances of hate crimes against the LGBTI+ community.

Desktop research and analysis of primary and secondary data were relied upon to analyse the number and nature of complaints brought before the SAHRC and CGE. Regarding the complaints before the SAHRC, data were furnished by the SAHRC and obtained from various reports published by the SAHRC, including Annual Reports and its Trend Analysis Report for the year 2016/17. Additional information was drawn from preliminary statistics provided by the SAHRC. Information on the nature and number of complaints submitted to the CGE was obtained from its Annual Reports.

### **3.4 Review and assessment of government strategic plans and annual reports**

This fourth component of the study relies predominantly on qualitative research methods to provide an in-depth analysis of government's responses (at the national departmental level) in terms of goals, strategic objectives, programmes, projects, and interventions to address intolerance and discrimination as per the NAP. To identify and review existing government responses, an analysis was done of the 2018/19 Strategic Plans and Annual Reports as published by 36 government departments. More specifically, an attempt was made to retrieve the Strategic Plans for years 2015-2019 and Annual Reports for the year 2018/19. Where these reports were not available, the previous financial year's report or plan was utilised.<sup>22</sup>

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<sup>22</sup> See Appendix 1 for the List of Government Departments that were subject of the review. For the list of the Strategic Plans and Annual Reports that were reviewed for the purpose of the study see Annex 4 available at [www.fhr.org.za](http://www.fhr.org.za)

### 3.4.1 A note on terminology used

The study distinguishes between ‘mandate-related’, ‘substantive’, ‘symbolic’ and ‘isolated’ goals, objectives, indicators, and interventions (i.e. implemented projects and programmes). This terminology was used to broadly distinguish between different types of goals, objectives, indicators, and interventions as contained in the Strategic Plans and Annual Reports of government departments. Although all the goals, objectives, indicators, and interventions described in the study’s analysis address the NAP to some extent, they differ in their approach and scope and are not necessarily mutually exclusive. The intent of this analytical exercise was to draw broad themes and conclusions from the current set of government responses towards discrimination and intolerance. This exercise also shows that addressing only outcomes without dealing with root causes is short-sighted, as would be the opposite case of addressing only root causes without dealing with outcomes. Government policy must therefore operate effectively on both levels. Below is a brief description of relevant terms:

**Mandate-related goals,** objectives and interventions refer to those that have been developed in line with national policies and strategic objectives for the sector, and therefore operate within a very clear legal and policy framework at the national level, but which also apply to the particular mandate of a government department. These goals, objectives and interventions tend to be predominantly outcome-oriented and do not take sufficient account of the root causes or systemic nature of intolerance or discrimination. Examples include:

- Department of Basic Education: Several interventions aimed at ensuring access to water or sanitation at school or meals for learners, or other infrastructural or institutional improvements have been critical in diminishing inequalities and fighting against discrimination based on economic status, but have not addressed inequalities in systemic ways.
- Department of Economic Development: Number of jobs created, number of black women and youth in employment; funding for black industrialists and youth and women-empowered businesses.

**Substantive goals,** objectives and interventions refer to those that address (or attempt to address) the root causes of intolerance and discrimination and tend to be concerned with education, raising awareness, and changing mindsets. They are indirectly aimed at increasing access for historically disadvantaged and marginalised groups while addressing perceptions and attitudes towards these individuals and communities. Examples include:

- Department of Basic Education: Promoting a rights-based environment in schools that is free from discrimination, stigma, and any form of sexual harassment/abuse.
- Department of Sport, Arts and Culture: Translating documents into official languages, developing official terminologies in these languages, and supporting the development of qualified language practitioners, which contributes to language inclusivity.

**Symbolic goals**, objectives and interventions may be considered superficial rather than being focused on the root cause of the problem. These goals, objectives and interventions, such as the commemoration or distribution of South African flags, may have some short-term and perfunctory effects but do little to address the underlying problem in the longer term. These interventions generally are not mandate-related but rather linked to the overall goal of promoting ‘social cohesion’. Examples include:

- Department of Science and Technology: The Department has introduced some symbolic interventions aimed at addressing issues around ‘women in science and technology’ (e.g. DST UNESCO International Day of Women and Girls in Science 2019; Participation in the Cell C ‘Take a Girl Child to Work’ Day campaign with the City of Ekurhuleni; or the South African Women in Science Awards).

**Isolated goals**, objectives and interventions refer to those that address some issues described in the NAP but are isolated in their conception, and do not necessarily address the root causes of intolerance and discrimination, but may have impact that goes beyond symbolic goals, objectives and interventions. These goals, objectives, and interventions, which may or not be mandate-related, may include workshops, research reports or capacity building activities. Examples include:

- Department of Higher Education: The development and approval of a Policy Framework on Social Inclusion by 31 March 2017; and development and approval of a Policy Framework on Disability by 31 March 2018 (in this case, the approval of a policy is a step in the right direction but, in itself, does not contribute to addressing discrimination and intolerance since it must be effectively implemented).

### 3.4.2 Stages of analysis

In order to comprehensively review the Strategic Plans and Annual Reports, two stages of analysis were performed. The first stage resulted in a classification (based on scoring) of the extent to which government departments’ strategic plans and annual reports covered different types of goals, strategic objectives, indicators or interventions in line with the terminology shared immediately above. The second stage builds on the first stage to provide an assessment of each department’s strategic plan and annual report in terms of its overall alignment with the NAP. The overall alignment of the strategic plan and annual report with the NAP is a weighted average of scores allocated to each department for all four types of interventions.

The **first stage** started with the creation of a database which classifies each strategic goal, objective, indicator or intervention as ‘relevant’ or ‘not relevant’ for the NAP. These findings were analysed and presented in the form of narrative summaries for each department, which addressed the state’s intention to deal with discrimination and intolerance. These narrative summaries were then classified using a template that divides the goals, strategic

objectives, indicators, and interventions into the relevant categories i.e. mandate-related, substantive, symbolic and isolated as defined earlier, based on their alignment with the objectives of the NAP. These were necessarily subjective judgements but we have tried to ensure that the judgements were consistent.

Once the goals, strategic objectives, indicators and interventions were categorised and assessed, they were classified to determine whether the coverage of different types of goals, strategic objectives, indicators and interventions by each department was ‘extensive’, ‘some’, ‘limited’ or ‘none’. An ‘extensive’ coverage means that there has been a substantial number of goals, objectives, indicators or interventions of the type, and that this particular type outnumbered other types of goals, objectives, indicators or interventions. In other instances, ‘some’ goals, objectives, indicators or interventions have been included but these were not sufficient to describe their relevance as extensive. The ‘limited’ category refers to situations where only a few goals, objectives, indicators or interventions of the certain type have been designed or implemented, while ‘none’ means that, based on our analysis, the goals, objectives, indicators or interventions of a certain type have been negligible.

The assessment as ‘extensive’, ‘some’, ‘limited’ and ‘none’ was allocated a corresponding score, namely: 5 for ‘extensive’, 4 for ‘some’, 3 for ‘limited’ and 0 for ‘none’ (see the table below). Each type of goal, objective, indicator, and intervention was therefore allocated a corresponding score.

CATEGORY	EXTENT OF INCLUSION FOR EACH CATEGORY			
Substantive goals, objectives, indicators, and interventions	Extensive (5)	Some (4)	Limited (3)	Negligible and none (0)
Mandate-related goals, objectives, indicators, and interventions				
Isolated goals, objectives, indicators, and interventions				
Symbolic goals, objectives, indicators, and interventions				

The **second stage** builds on the first stage to provide an assessment of overall alignment of each department’s strategic plan and annual report with the NAP. This is provided in the form of a weighted average of scores allocated to each department for all four types of intervention. The weighted average is a sum of scores allocated to each department multiplied by a specific weight for a given category, divided by the sum of weights (100). The types of goals, objectives, indicators or interventions were assigned different weights reflecting their importance for the effective implementation of the NAP, and the impact that the NAP is meant to generate at the levels of



knowledge, attitudes and behaviours. Substantive goals, objectives, indicators and interventions contribute to 50% of the overall score, while mandate-related, isolated and symbolic goals, objectives, indicators and interventions account for 25%, 18% and 7% respectively, as set out below.

<b>Substantive goals, objectives, indicators, and interventions</b>	<b>50%</b>
<b>Mandate-related goals, objectives, indicators, and interventions</b>	<b>25%</b>
<b>Limited goals, objectives, indicators, and interventions</b>	<b>18%</b>
<b>Symbolic goals, objectives, indicators, and interventions</b>	<b>7%</b>

By combining the first and second stage analyses, an overall score was arrived at indicating the overall alignment of strategic plans and annual reports with the NAP for each government department, defined as follows:

<b>Satisfactory</b>	<b>5</b>
<b>Fair</b>	<b>4</b>
<b>Limited</b>	<b>2 - 3</b>
<b>None</b>	<b>0 - 1</b>

### 3.5 Review of 'Towards a 25 Year Review: 1994-2019' document

This final component of the study is based on desktop research and examines the review document produced by the Department of Planning, Monitoring and Evaluation (DPME) in order to pinpoint the extent to which government actions aimed at combating intolerance and discrimination have been incorporated and are reflective of the NAP.

An initial chapter-by-chapter analysis of the review was undertaken before a second round of analysis was conducted in order to narrow down the findings. For purposes of analysis, findings are presented in relation to each chapter of the 25-year review and are structured as follows: (1) summary of the government's assessment of its progress in relation to the NAP; (2) focus of the government; (3) shortcomings arising from the government's approach and recommendations.

# 4. Findings from the study

## 4 Findings from the study

### 4.1 General findings on data from attitudinal surveys

Even though the NAP places emphasis on the collection of data to address discrimination and intolerance, there are a number of shortcomings that became apparent in our analysis of existing data from the attitudinal surveys used in this study.

Attitudinal surveys focus on intolerance and discrimination at the individual level while administrative data tend to demonstrate the level of systemic intolerance and discrimination. Yet, the use of different methods of data collection and even subtle changes in the phrasing of questions makes cross-survey comparisons extremely difficult. Further, the data from these surveys reflect systematic flaws that undermine detailed and specific analysis. For instance, 'sex' and 'gender' are often used interchangeably without providing sufficient clarity on their specific meaning, while there is an ongoing understanding of sex as a binary concept that excludes intersex as a category. Similarly, categories such as 'language' are often not defined – it is often not clear whether they include sign language or braille.

There are also significant variations on how survey data are presented – in some cases, raw data sets are available with little or no supporting analysis, while in others, data are accessible only through narrative reports which limits any attempt at in-depth analysis. There are some sources, however, that provide both narrative reports and results from data analysis in accessible formats which could potentially be used as a possible template for the data collection and dissemination components of the NAP.

Similarly, there are discrepancies on data disaggregation, or ability to generate data at sub-population levels. Some surveys are quite comprehensive while others are less so. Of concern, for our purposes, is that none of the analysed surveys has disaggregated data along significant grounds of discrimination such as HIV/Aids status, culture, religion or marital status. The lack of such data makes ongoing monitoring of the effect of targeted policy initiatives difficult, if not impossible.

## 4.2 General findings on administrative data

Administrative data used in our study of employment and education were generally disaggregated by race, sex (binary approach between male and female), occupational status and level of education. While there seems to be a wealth of data on race and gender as grounds of discrimination, this is less true for disability and nationality, and considerably less for grounds such as indigenesness, albinism, occupation, and language. Even though disability is measured in relation to the Employment Equity Act to monitor equity in employment, there are no large-scale efforts in the country to document unfair discrimination based on disability. Much of the data on disability also focus on visible forms of disability and do not include disability in its diversity, which further disadvantages people who suffer from physical or mental disabilities which are not overt in character.

Worryingly, despite almost two decades since the call to action embodied in the DDPA, little to no data have been collected on xenophobia, and discrimination based on sexual orientation or language. Nationality-disaggregated data are especially important for measuring xenophobia, which is in the title of the NAP. Data and information on unfair discrimination on the basis of nationality indicates a starting base, but further development is needed. The largest component of data on nationality-based discrimination appears to be from organisations engaged in advocacy, litigation, research and community services. These might be logical places to start addressing how xenophobia data may be developed.

In terms of sexual orientation, there are several noteworthy sources of data and information, particularly amongst advocacy, impact litigation and civil society service organisations. However, official level data, such as in employment and employment practices, is thin. This could again be the product of conceptual and definitional challenges in measuring such discrimination, particularly regarding the role of self-identification into these various categories. Of particular concern is the generally dismal understanding of foundational differences between gender identity, sex, and sexual orientation.

Language is another important indicator for discrimination which is not currently visible in the available data. English is the *lingua franca* for formal business in South Africa, and many jobs require fluency in the language. People who are not fluent in English are therefore structurally excluded from the formal job market, which amounts to indirect discrimination.

In sum, South Africa's available data on axes of identity which are sites for discrimination are small, but significant. The often default disaggregation of data by race, gender, and to a lesser extent, age and disability indicates

the high prevalence of these aspects of transformation and discrimination: they are foremost in the national mindset, following the fairly recent history in which both black individuals and women were severely oppressed. However, the lack of similar statistics organised by nationality, sexual orientation, and language or disability, indicates the rendering invisible or ‘invisibilisation’ of these bases for discrimination and the consequent lack of transformation in these areas. This uneven coverage of various axes of discrimination requires attention from the NAP in order to ensure that appropriate interventions are developed to address discrimination along these axes.

### 4.3 General findings on levels of intolerance and discrimination from attitudinal surveys

Four surveys asked an explicit question about discrimination. On one hand, the Stats SA 2018/19 Survey included questions about both people’s perceptions of the level of discrimination and whether they had experienced discrimination (further disaggregated by grounds for discrimination). The FHR Survey and the Afrobarometer survey, on the other hand, include a question on actual discrimination, while the 2017 SASAS inquires to what extent respondents describe themselves as a member of the group that is discriminated against. All the surveys also included information about the basis for this self-declared experience of discrimination but the list of discriminatory grounds was limited and excluded HIV/Aids status, pregnancy status, culture, or marital status.

Generally, surveys do not provide information on the source of discrimination (e.g. whether it is perpetrated by the state, an institution, or an individual) but some surveys include information regarding the most likely location for discrimination. The Afrobarometer survey included a question concerning whether the respondents had ever been unfairly treated by the government, but did not include similar questions concerning other institutions.

The level of intolerance (perceptions of discrimination) is much greater than actual reported discrimination. This could be because it is exaggerated psychologically as Govender states, or because it is underreported, or a combination of these factors.

Discrimination based on disability, in principle, can affect only those who present one or more dimensions of disability. The surveys, however, tend to analyse the level of discrimination of the total population hence diminishing its relevance. For example, in the national statistics this type of discrimination ranks as the lowest type.

Table 1: The Levels of Perceived, Experienced and Reported Discrimination (2017 – 2018)

Year of the survey	2017		2017		2018		2018		2018/19	
	Survey	2017 SASAS	2017 FHR Survey	Stats SA 2018/19 Survey	2018 Afrobarometer	SAHRC	SAHRC	SAHRC	SAHRC	SAHRC
Question asked	Would you describe yourself as a member of the group that is discriminated against? If Yes: On what grounds is your group discriminated against?	Have you been a victim of discrimination in the past year? Respondents were asked to speculate why they thought the discrimination had taken place	Which of the following types of discrimination do you think exist in South Africa (perceived)? Have you personally experienced discrimination based on the following during the past 12 months (experienced)?	In the past year, how often, if at all, have you personally been discriminated against based on any of the following...? (Yes: 'Once or twice'; 'several times' and 'many times' combined)	Number of 'Equality Complaints' reported to the SAHRC in 2018/19. For the purpose of this exercise we have combined race and colour, and sex and gender.					
Personal v.s. group experience	Experience as part of the group	Personal experience	Personal experience / perception	Personal experience	Personal experience	Personal experience	Personal experience	Personal experience	Personal experience	Personal experience
When it happened	N/A	Last year	Last year	Last year	Last year	Last year	Last year	Last year	Last year	Last year
Reference group	% of those who said 'Yes'	% of the total number of respondents	% of those who had experienced discrimination	% of the total number of respondents	% of the total number of respondents	% of the total number of respondents	% of the total number of respondents	% of the total number of respondents	% of Equality Complaints reported to the SAHRC	% of Equality Complaints reported to the SAHRC
<b>Grounds</b>	<b>Experienced</b>	<b>Experienced</b>	<b>Experienced</b>	<b>Perceived</b>	<b>Experienced</b>	<b>Experienced</b>	<b>Experienced</b>	<b>Reported</b>	<b>Reported</b>	<b>Reported</b>
<b>Discrimination (Y/N)</b>	<b>27.9%</b>		<b>9%</b>		<b>13%</b>					<b>Total: 783</b>
Race or colour	46.1%	20.3%	45%	59%	7%			65.4%		512
Language or dialect	11.4%	5.0%	27%	29%	2.5%			0.4%		3
Poverty, wealth status or unemployment	12.5%	5.5%	19%	32%	2%					
Ethnic / tribal group										
Nationality	8.2%	3.6%	21%	29%	1.6%		16%	4.0%		31
Religion	4.6%	2.0%	16%	40%	1.5%					
Education status	4.8%	2.1%	14%	25%	1.5%		14%	4.5%		35
Political affiliation			15%	25%	1.3%					
Sex or gender	3.9%	1.7%	10%	26%	1%					
Age	1.9%	0.9%	17%	27%	0.9%		11%	2.2%		17
Region, province or origin	2.1%	0.9%	18%	18%	0.9%			1.8%		14
Disability	1.6%	0.7%	7%	20%	0.7%					
Sexual orientation	1.9%	0.8%	7%	23%	0.5%		5%	9.7%		76
Culture			7%	24%	0.1%			6.4%		50
Pregnancy								0.4%		3
Belief								0.1%		1
								0.1%		1

Sources of Data: 2017 SASAS Survey by the HSRC; 2017 FHR Survey by the Foundation for Human Rights; Survey by Stats South Africa from 2018/19 and the Afrobarometer Survey 2018, SAHRC

## 4.4 Key findings: Levels of intolerance

### 4.4.1 General findings

The levels of perceived discrimination (intolerance) are much higher than the levels of discrimination experienced by individuals. In this regard, 59% of South Africans believe that discrimination based on race exists, 40% are of the view that discrimination based on nationality exists, while 32% indicated that discrimination based on poverty, wealth, or unemployment status exists. These were the three most frequently cited grounds of perceived discrimination (intolerance). Relatedly, the biggest sources of division in the country in order of importance tend to be inequality, race, and political parties.<sup>23</sup> Unemployment, crime and security, corruption, and housing were cited as the biggest problems facing the country; only 1% of respondents mentioned inequality and discrimination as a main problem.<sup>24</sup>

Intolerance is often closely linked to people's perceptions about being treated unfairly or unequally. Accordingly, the 2017 FHR Survey found that the majority of respondents felt that they were never treated unfairly (57%). However, still one in five respondents felt that they were often (14%) or always (6%) unfairly treated by other people.<sup>25</sup> Similarly, a majority of respondents in two surveys said that equality before the law and equality in treatment in interactions with law enforcement, judicial and government officials is respected (51-60.6%)<sup>26</sup>. Yet, between 25-30% of respondents said that people are always treated unequally before the law.<sup>27</sup> People living in urban areas were more likely to say that people are treated unequally. Respondents felt that this is one of the most important characteristics of democracy, but one of the least respected.<sup>28</sup>

According to the 2017 SARB Survey, foreign nationals from other African countries are the least-trusted group, by most respondents (51.9%). Foreign nationals from non-African countries ranked second among the least trusted groups (51.1%), and people of other races ranked third (31%). Indian/Asian individuals were most distrustful of other groups generally, while white and coloured individuals were the least distrustful.

<sup>23</sup> 2017 SARB Survey, p.16.

<sup>24</sup> 2018 Afrobarometer Survey, pp.50-51.

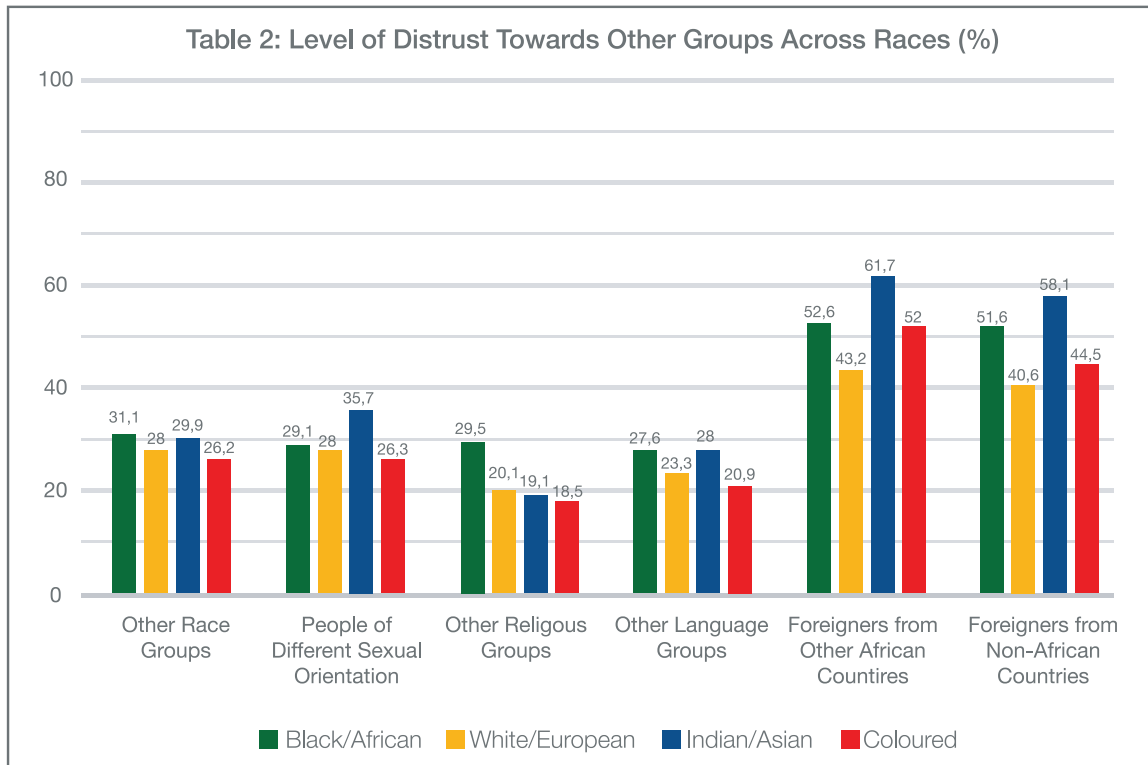
<sup>25</sup> 2017 FHR Survey, p.59.

<sup>26</sup> 2018/19 Stats SA Survey, p.15; 2017 FHR Survey, p.32.

<sup>27</sup> 2018 Afrobarometer Survey, Question 42D, p.31.

<sup>28</sup> Ibid.





Source of Data: 2017 SARB, Institute for Justice and Reconciliation

#### 4.4.2 Racism / Race intolerance

Centuries of colonisation and apartheid built upon the notions of race, ethnicity, and language have left many South Africans identifying themselves predominantly with these identity markers. While white and coloured South Africans are more likely to associate themselves with a language group and identity, African respondents tend to identify primarily through race or ethnicity.<sup>29</sup>

According to the 2017 SARB and FHR surveys, about one third of South Africans distrust other race groups completely and approximately one quarter, particularly coloured and white people, think that race relations have worsened since the end of apartheid.<sup>30</sup> Despite more than 25 years of democracy, a large majority (about



<sup>29</sup> 2017 SARB Survey, p.15.

<sup>30</sup> Ibid., p.23.

62%) find it difficult to associate with other race groups and 14% are not open to any further interaction with people from other race groups.<sup>31</sup> Whites tend to be the least approving of integration in all respects (including neighbourhoods and schools).<sup>32</sup>

#### 4.4.3 Intolerance based on sex

One in four South Africans thinks that equal opportunities and treatment of women have become worse (23%), while 28% think that there has been no recent progress.<sup>33</sup> More specifically, almost half of the population (49%) thinks that government is not doing enough to promote opportunities and equality for women.<sup>34</sup> Moreover, while more than half of all South Africans support the idea of gender-equity in the workforce<sup>35</sup> and think it should be prioritised, it is of concern that up to a quarter of the population does not support gender-based affirmative action policies.<sup>36</sup>

Significant proportions of the South African population are prejudiced when it comes to capabilities and the rights of women. Approximately one in five men and women do not believe that women are as capable as men as leaders (21%)<sup>37</sup> and 35% (more men than women) think that men should take priority in the allocation of resources, particularly jobs.<sup>38</sup> Approximately half of South Africans (47%-54%) think that women should take primary responsibility for childcare.<sup>39</sup> Additionally, almost one in five South Africans (18%), more likely men, think that women should not have the same rights to own and inherit land as men do.<sup>40</sup>

These attitudes and prejudices are mirrored when viewing interpersonal relationships, which are reflective of patriarchal societal norms. About 40% of South Africans, both men and women (44% men; 39% women) believe that it is a husband's right to demand sex,<sup>41</sup> and about 20% believe that a husband is justified in beating his wife.<sup>42</sup>

#### 4.4.4 Intolerance based on sexual orientation

Although a large majority of South Africans are tolerant towards LGBTI+ groups, particularly among younger adults, about one third (32%) do not think that people in the country are free to choose and express their sexual

<sup>31</sup> Ibid., p.29.

<sup>32</sup> Ibid., p.30.

<sup>33</sup> 2018 Afrobarometer Survey, Question 57G, p.59.

<sup>34</sup> Ibid., Question 56Q, p.56.

<sup>35</sup> 2017 SASAS Survey (58%); 2017 SARF Survey (approximately 66%)

<sup>36</sup> The figure is 6% for the 2017 SARF Survey and 23% for the 2017 SASAS Survey.

<sup>37</sup> 2017 FHR Survey, pp.19-20.

<sup>38</sup> 2018 Afrobarometer Survey, Question 38D, p.28.

<sup>39</sup> 47% from the 2017 FHR Survey, p.20; 54% from 2018 Afrobarometer Survey, Question 38F, p.28.

<sup>40</sup> 2018 Afrobarometer Survey, Question 38E, p. 28.

<sup>41</sup> 2017 FHR Survey, pp.19-20.

<sup>42</sup> 16% of respondents in 2017 FHR Survey, p.20; 19% in 2018 Afrobarometer Survey, Question 78B, p.71.

orientation without fear or judgement,<sup>43</sup> while one quarter (26%) believe that being gay or lesbian is against the values of their communities.<sup>44</sup> Similarly, close to one third of the population distrust people of other sexual orientations (between 26%-29%)<sup>45</sup> and disapprove of the idea of having homosexual neighbours (28%).<sup>46</sup> Levels of tolerance seem to wane in relation to granting same-sex couples equal marital rights. Almost two thirds of respondents, particularly black people, oppose same-sex marriages (66%).<sup>47</sup>

#### 4.4.5 Intolerance based on HIV status

Unfortunately, only one of the surveys analysed included questions on discrimination based on HIV status or other infectious diseases. These data showed some disturbing levels of intolerance as one in five respondents (21%) feel that people who are HIV-positive should not be allowed to work with children.<sup>48</sup>

#### 4.4.6 Intolerance based on religion

Freedom of religion appears to be one of the most respected rights in South Africa – there is a high level of trust in people from other religious groups.<sup>49</sup> Black Africans seem to be the most distrustful of other religious groups.<sup>50</sup> In general, however, only 8% of the population thinks that freedom of religion is never respected.

#### 4.4.7 Xenophobia / Intolerance based on nationality

There is a high level of intolerance of foreign nationals in South Africa. About 40% of South Africans and 53% of migrant populations believe that discrimination based on nationality exists in South Africa.<sup>51</sup> Similarly, the level of distrust towards foreign nationals is high, with at least half of the population distrusting people from other African countries (53%) and from non-African countries (50%).<sup>52</sup> Indian/Asian respondents were most likely not to trust foreigners (58.1%-67.1%), while White respondents were the least likely to distrust them (40.6%-43.2%).<sup>53</sup>

Both the 2017 FHR and Afrobarometer surveys reveal that this antipathy is strongly linked to prejudices against foreign nationals, particularly perceptions that foreign nationals are responsible for the lack of jobs and opportunities. Over two fifths (44%) of South Africans in the 2017 FHR Survey and 51% in the 2018 Afrobarometer Survey think that the government should not allow foreigners to work in South Africa because they take jobs and benefits away from South Africans. Further, more than 60% of South Africans believe that

<sup>43</sup> 2017 FHR Survey, p.21.

<sup>44</sup> Ibid., p.20.

<sup>45</sup> Ibid., p.24; 2017 SARB Survey, p.43.

<sup>46</sup> 2018 Afrobarometer Survey, Question 87C, p.80.

<sup>47</sup> 2017 SARB Data Set, Question: Many people in the country have different views about certain legal rights. How much do you approve of the following being legal or being made legal in South Africa? Same sex marriages.

<sup>48</sup> 2017 FHR Survey, pp.22-23.

<sup>49</sup> Ibid., p.24; and 2018/19 Stats SA Survey, p.15.

<sup>50</sup> 2017 SARB Survey, p.44.

<sup>51</sup> 2018/19 Stats SA Survey, p.26.

<sup>52</sup> 2017 SARB Survey, p.59.

<sup>53</sup> Ibid.

immigrants increase the crime rate, take jobs from South Africans, and use up South Africa's resources.<sup>54</sup> It is nonetheless encouraging that approximately between one third and two fifths of South Africans hold positive attitudes towards immigrants (i.e. seeing them as being good for the economy, making South Africa more open and diverse, and bringing necessary skills).<sup>55</sup>

#### 4.4.8 Intolerance based on language

While language tends to be a key identifier for adult South Africans, data seem to show that it is not a major source of division or intolerance. This being said, over a quarter of the population (29%) believes that discrimination based on language or dialect occurs, and a similar proportion do not trust people from other language groups.<sup>56</sup> People speaking Tshivenda were the most likely to not trust other language groups (49%), followed by isiNdebele (40%), and isiZulu (29%) speakers.<sup>57</sup> Some people remain sceptical about other peoples' respect for their mother tongue, with more than a quarter of respondents (27%) believing it will get worse in the immediate future.<sup>58</sup>

#### 4.4.9 Intolerance based on political affiliation

South Africans are generally satisfied with the level of political freedom in the country. A large majority (approximately 80%) feel that the right to political freedom is respected, with only 9% believing it is never respected. However, one in four South Africans (26%) believe that discrimination based on political affiliation exists,<sup>59</sup> and almost one third do not trust people with different political views (29%).<sup>60</sup>

Though political freedom is considered one of the most respected rights in the country, the majority of the population (52%) fears becoming a victim of political intimidation or violence during political campaigns<sup>61</sup> and another two thirds (63%) think that they must be careful about which political organisation they join and what they say about politics.<sup>62</sup>

#### 4.4.10 Intolerance based on disability

In principle, discrimination based on disability can affect only those who live with at least one disability. The available data do not generally deal with available services for disabled people, and do not examine attitudes towards persons with disabilities. However, almost one quarter of the population thinks that discrimination based on disability occurs (23%).<sup>63</sup>

<sup>54</sup> 2017 SASAS Survey.

<sup>55</sup> See Annex 1. Available at [www.fhr.org.za](http://www.fhr.org.za)

<sup>56</sup> 2017 FHR Survey, p.24.

<sup>57</sup> 2017 SARB Data Set, Question: How much do you trust the following groups of people? Other language groups.

<sup>58</sup> Ibid., Question: The Constitution requires the government to protect the rights of all citizens so that we may practice our cultures and religions and use our mother tongue language. Over the next 2 years, do you think other people's respect for your mother tongue language will ...?

<sup>59</sup> 2018/19 Stats SA Survey, p.26.

<sup>60</sup> 2017 FHR Survey, p.24.

<sup>61</sup> 2018 Afrobarometer Survey, Question 40, p.30.

<sup>62</sup> Ibid., Question 42A and Question 42B, p.30.

<sup>63</sup> 2018/19 Stats SA Survey, p.26.

Almost half of the population (47%) believes that the current government does not do enough to promote and protect the rights and opportunities of persons with disabilities.<sup>63</sup>

#### 4.4.11 Intolerance based on ethnicity

The analysed surveys did not provide much information on people's attitudes towards other ethnic groups. Questions concerning 'trust in others' do not explicitly list ethnic groups. However, according to the available information, one third of the population (29%) believes that discrimination based on ethnicity or tribal group exists in South Africa,<sup>64</sup> while 14% of the population dislikes the idea of having neighbours of a different ethnicity.<sup>65</sup>

#### 4.4.12 Intolerance based on age

None of the surveys included direct questions on age-based intolerance. The available data reveal that one in five South Africans (18%) feels that age-based intolerance exists.<sup>66</sup>

#### 4.4.13 Intolerance based on socio-economic status

The surveys excluded explicit questions on the levels of intolerance, prejudice, and attitudes towards socio-economic status. However, the 2017 SARB Survey indicates that a large majority (approximately 80%) view inequality as the biggest division in the country, and one third of the population (32%) believes that discrimination based on poverty and wealth exists.<sup>67</sup> This type of intolerance ranked as the third most frequently cited basis for perceived discrimination.

### 4.5 Key Findings: Levels of Discrimination

#### 4.5.1 General observations

While there are some discrepancies between the FHR and Stats SA surveys, about 10% of South Africans reported that they have been discriminated against in the past two years. Over one quarter (27.9%) of respondents described themselves as belonging to a group that is discriminated against.<sup>68</sup> Race was cited as the main basis of discrimination by most respondents to all surveys. The other most-cited grounds include language, ethnicity, and socio-economic status as shown in the table below.

<sup>63</sup> 2018 Afrobarometer Survey, Question 56S, p.57.

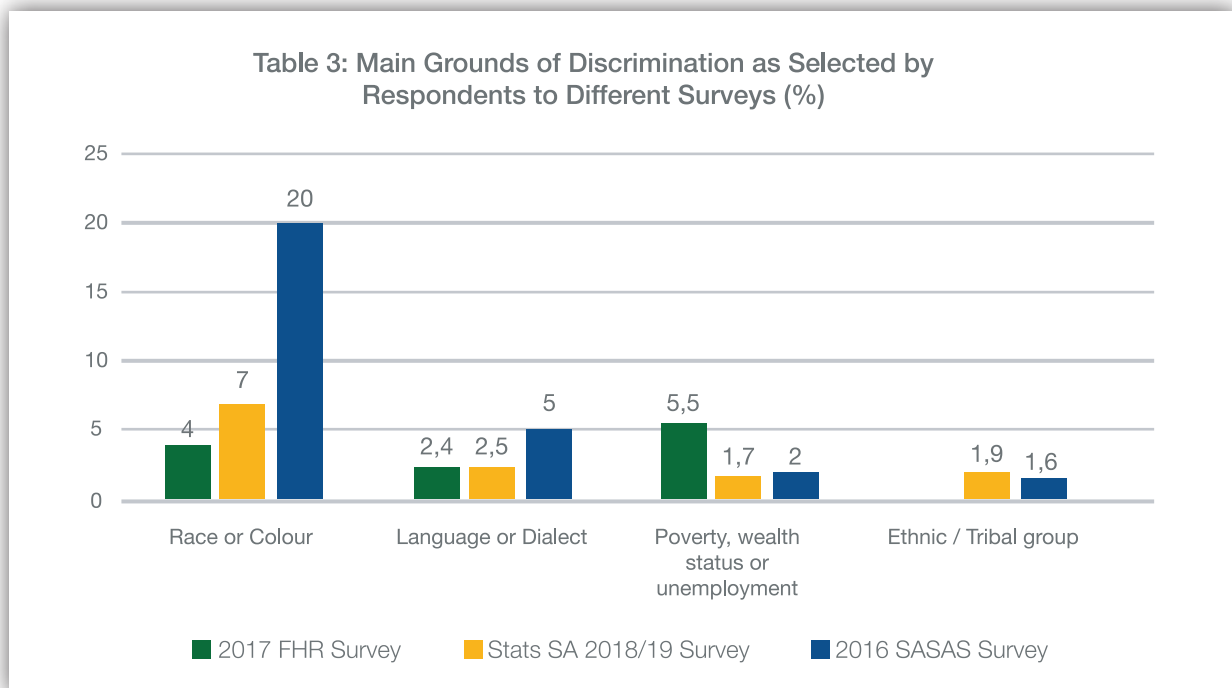
<sup>64</sup> 2018/19 Stats SA Survey, p.26.

<sup>65</sup> 2018 Afrobarometer Survey, Question Q87B, p.80.

<sup>66</sup> 2018/19 Stats SA Survey, p.26.

<sup>67</sup> Ibid., p.26.

<sup>68</sup> 2017 SASAS survey



Generally, surveys do not provide information on the source of discrimination (e.g. whether it is perpetrated by the state, private institutions, or individuals) but some surveys include information regarding the most likely source of discrimination. A third (32%) of all respondents who had suffered discrimination said that this took place in a public place, with a stranger. Other commonly cited places in the surveys were: work, home, and government departments. It seems that it is more likely for discrimination to occur in a public place or at home than in a state institution.<sup>69</sup>

#### 4.5.2 Racism and racial discrimination

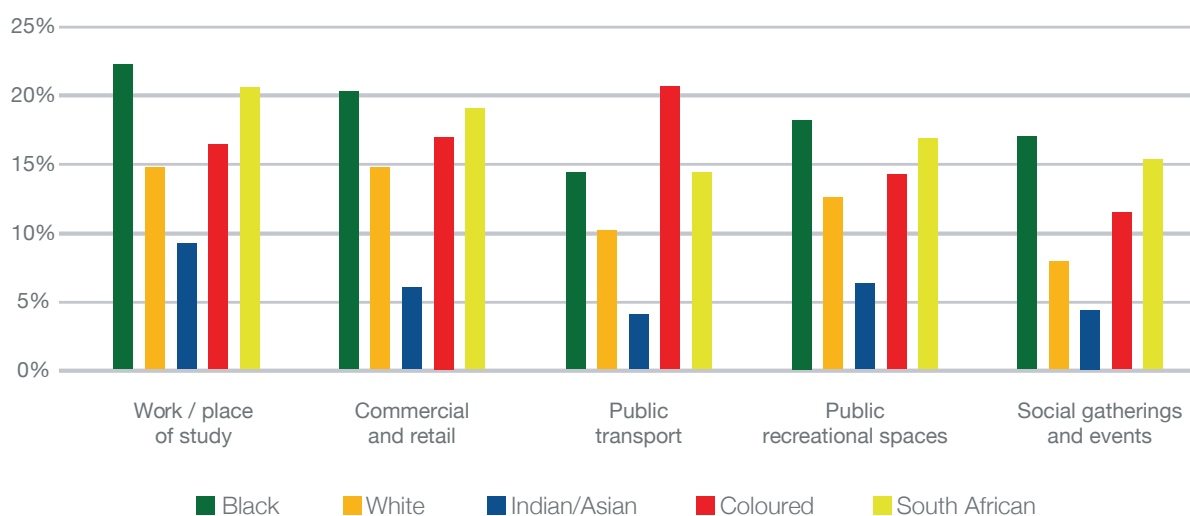
Discrimination based on race is the most commonly reported type of discrimination experienced. Men, rather than women, and people in urban areas, rather than in rural areas, were more likely to report discrimination based on race.<sup>70</sup> One in every five (20.7%) South African reported that racism affects their daily lives ‘always’ or ‘often’ in the workplace or place of study, followed by commercial and retail spaces (19.1%), recreational spaces (17%), social gatherings and events (15.4%), and on public transport (14.4%).<sup>71</sup>

<sup>69</sup> 2017 FHR Survey, p.60.

<sup>70</sup> *Ibid.*, pp.60-61.

<sup>71</sup> 2017 SARF Survey, p.32.

Table 4: Frequency of racism affecting people in their daily lives, always/often (%)



Source of Data: 2017 SARB, Institute for Justice and Reconciliation

Over half of the population (52.1%) found it more difficult to confront strangers who behaved in a racist manner than acquaintances. Up to 42% would find it difficult to confront such behaviour from a person in authority or a superior at work; and 40% agreed that it is difficult to confront such behaviour in a colleague.<sup>72</sup>

#### 4.5.3 Discrimination based on gender or sex

There is wide variation in the reported levels of discrimination based on sex or gender, ranging from about 1% of the population (Stats SA/FHR Surveys) to up to 12% (Afrobarometer Survey).<sup>73</sup> In part, this is due to the fact that the wording of the questions was different across the surveys (open-ended v.s. prompted question on gender discrimination) and there was an inconsistent use and definition of the terms 'gender' and 'sex'. These discrepancies highlight the importance of standardising questions/definitions for NAP-driven data collection.

#### 4.5.4 Xenophobia / Discrimination based on nationality

In contrast to 1.5% of South Africans, about one in five (18%) foreign nationals in South Africa have been discriminated against based on their nationality.<sup>74</sup> The most recent xenophobic attacks (in September 2019)

<sup>72</sup> Ibid., p.33.

<sup>73</sup> These responses were prompted.

<sup>74</sup> 2018/19 Stats SA Survey, p.28.



have been the third most violent since 1994. The two previous peaks occurred in 2008 and 2015. In 2019, the number of xenophobic incidents increased by 62% from 2018, predominantly in Gauteng and KwaZulu-Natal. Displacement was the most common type of violence with 1449 incidents reported in 2019, followed by looting of shops (over 147 cases), physical assaults (43), and deaths (13).<sup>75</sup>

#### 4.5.5 Discrimination based on sexual orientation

There is very limited data on the prevalence of discrimination based on sexual orientation. The only available information suggests that approximately 1% of the population has experienced discrimination based on their sexual orientation.<sup>76</sup> Unfortunately, these data cannot be generalised to what proportion of LGBTI+ people have been discriminated against.

#### 4.5.6 Discrimination based on ethnicity

There is wide variation in the reported levels of discrimination based on ethnicity, ranging from about 1-2% of the population (Stats SA/FHR Surveys) up to 16% (Afrobarometer Survey). The latter survey also found that about 38% of the population had been unfairly treated ('sometimes', 'often or always', combined) by the government because of their ethnicity.<sup>78</sup>

#### 4.5.7 Discrimination based on religion

There is wide variation in the reported levels of discrimination based on religion, ranging from about 1.5% of the population (Stats SA/FHR Surveys) up to 14% (Afrobarometer Survey).<sup>79</sup>

#### 4.5.8 Discrimination based on language

Discrimination based on language is not covered in detail in the surveys. Discrimination based on language is the second most-cited type of discrimination, affecting approximately 2.5-3% of the population.<sup>80</sup>

#### 4.5.9 Discrimination based on disability

Only 0.5% of the population cited disability as a basis for discrimination.<sup>81</sup> However, this is not reflective of the prevalence of this type of discrimination, as it affects only people with a disability. Accordingly, the level of discrimination can only be measured against the population living with disability. Using an estimated number of

<sup>75</sup> Xenowatch, Xenowatch Factsheet: 1 Incidents of Xenophobic Violence in South Africa: January – September 2019, available at <http://www.xenowatch.ac.za/about-xenowatch/>, (accessed 12 July 2021).

<sup>76</sup> 2018/19 Stats SA Survey, p.27; 2017 FHR Survey, p.61.

<sup>77</sup> These discrepancies could be linked to how the question was asked in the different instruments. The Stats SA and FHR instruments relied on open-ended questions (without ethnicity being expressly mentioned), whereas the Afrobarometer survey explicitly prompted respondents to answer questions about discrimination on the basis of ethnicity – a factor that could explain the higher percentages.

<sup>78</sup> 2018 Afrobarometer Survey, Question Q85A, p.78.

<sup>79</sup> Once again, these discrepancies might be linked to the use of open-ended questions vs. questions (as used in the Afrobarometer survey) that prompt respondents to provide their opinion explicitly on the issue of religion, in this instance.

<sup>80</sup> 2017 FHR Survey, p.61; 2018/19 Stats SA Survey, p.27.

<sup>81</sup> 2018/19 Stats SA Survey, p.27.

people living with disability, FHR calculated that around 11% of the population declaring a disability reported discrimination.<sup>82</sup> Another survey reported this level at 18%, but the response was prompted.<sup>83</sup>

#### 4.5.10 Discrimination based on political affiliation

Only 1% of the population experienced discrimination based on their political affiliation.<sup>84</sup> However, more than 30% of the population used or would use force or violence for a political cause.<sup>85</sup> Between 2016 and 2018, one in five South Africans feared political violence at political rallies, while 11% had experienced this type of violence.<sup>86</sup>

#### 4.5.11 Discrimination based on socio-economic status

Between 1.7% and 2% of the population said that they were discriminated against based on their wealth or socio-economic status.<sup>87</sup>

## 4.6 Key findings: Administrative data in relation to education and employment

### 4.6.1 Key findings from Govender's research

There has been significant progress in South Africa regarding the measurement and tracking of some data, especially regarding gender and race by government, several Chapter 9 institutions, think tanks, and research institutions. Key entities include Stats SA, the Centre for Justice and Crime Prevention (CJCP), Afrobarometer, and Genderlinks.

The South African Police Service (SAPS) data is also fairly comprehensive and offers valuable insights into crime and violence in the country, even though they might underrepresent the actual figures of crime and violence due to underreporting. To address the conflict of interest that could arise by the SAPS reporting on their own statistics as performance indicators (increasing the likelihood that numbers would be lower to indicate their success), a Memorandum of Understanding between the SAPS and Stats SA has been signed to enable the SAPS to collect crime data according to national regulations. As of 2019 the SAPS crime data does not yet

<sup>82</sup> Ibid., p.8 and p.27.

<sup>83</sup> 2018 Afrobarometer Survey, Question Q86D, p.80.

<sup>84</sup> 2018/19 Stats SA Survey, p.27; 2017 FHR Survey, p.61.

<sup>85</sup> 2017 SARB Survey, p.47.

<sup>86</sup> 2018 Afrobarometer Survey, p.62.

<sup>87</sup> 2018/19 Stats SA Survey, p.27; FHR Survey Report, p.61.

qualify as official statistics, pending a final external statistical assessment.<sup>88</sup>

Overall, Govender finds that despite impressive strides towards eradicating discrimination and increasing awareness of vulnerable and marginalised groups who are discriminated against, the areas of concern remain. For instance, many international treaties and conventions which South Africa is a signatory to have not been formally integrated into national legislation (e.g. disability). Moreover, South Africa does not fulfil reporting requirements in terms of presenting relevant data for certain groups' representation in employment, education and other fields. Additionally, there has been a focus on racial, age and sex-based discrimination, with statistics most commonly stratified along these axes. This is to the exclusion of other significant marginalised groups who are discriminated against based on their sexual orientation, language, nationality, and disability.

Another related issue is the misrepresentation of findings to make them appear more favourable, such as in racial representation in terms of employment, where the figures have increased to more closely resemble the general population. However, this is only for the people who have managed to enter the labour market. Almost a third of the population (29%) is unemployed, and their social makeup in terms of race and gender is far less representative of the population and far more representative of structural discrimination and barriers to entering the labour market. Another example of this is quoting the matric pass rate (81,3%<sup>89</sup>), which sounds impressive in isolation, until one realises that throughput rate<sup>90</sup> is only 47%.

Govender also notes several foundational issues which could impact on the implementation of the NAP. Key amongst them is government departments' ignorance or misunderstanding of the NAP and what it involves, particularly in relation to the tenets of the NAP beyond racism, and personal versus systemic discrimination. Many departments focus on racism but fail to engage other axes of discrimination; they do not address the 'xenophobia, and other related intolerances' aspect of the policy. In turn, this contributes to the rendering invisible or 'invisibilisation' of discrimination based on disability, sexual orientation, language, and nationality, which means that those who experience these types of discrimination are not validated. The difference between personal versus systemic discrimination is the second issue that is also commonly misunderstood. Govender explains that this is part of a human response to anecdotal evidence of issues as opposed to substantial data, which is less accessible in terms of creating a personal connection to an issue.

<sup>88</sup> The memorandum between the Crime Registrar and Statistics South Africa (Stats SA) is maintained. The component has successfully completed the first five stages of engagement outlined in the South African Statistical Quality Assurance Framework (SASQAF) and now proceeds to the final stage, independent assessment. During the previous financial year, the Crime Registrar reported that it had completed the fifth stage (self-assessment) of the six stages of engagement and was awaiting feedback from Stats SA. The feedback obtained thus far recommended the commencement of independent assessment, particularly focusing on the SASQAF dimensions in which the readiness assessment scores were above the recommended 80%. This information was obtained from South African Police Services (2018), Annual Crime Report 2017/2018, available at [https://www.saps.gov.za/services/annual\\_crime\\_report2019.pdf](https://www.saps.gov.za/services/annual_crime_report2019.pdf), (accessed 12 July 2021), p.5.

<sup>89</sup> Department of Basic Education (2020), Report on the 2019 National Senior Certificate Examination, January 2020, available at <https://www.education.gov.za/Portals/0/Documents/Reports/2019%20NSC%20Examination%20Report.pdf?ver=2020-01-07-155811-230>, (accessed 12 July 2021), p.5 and p.55.

<sup>90</sup> The number of grade 1 learners who become matric candidates at the end of 12 years.

Another concern is government departments' reasoning that discrimination or related issues are not related to a particular department's line of work, which Govender attributes to the result of two responses to the NAP. One is that some departments may be shirking their responsibility, by claiming that it is not their duty to deal with issues of discrimination. Another is a deeper issue, of not understanding the mechanisms of discrimination and how seemingly unrelated departments house useful data to understand the extent of discrimination in South Africa. The latter is more serious as it means that there is a profound ignorance of the intersectional nature of discrimination, especially in the South African historical context. Layers of patriarchal, colonial and racist structures continue to mar national efforts to eradicate inequality and discrimination across many axes of identity.

#### **4.6.2 Key findings: The makeup of data**

In general, data from national statistics are disaggregated by only one criterion, such as race, gender, or age, and not multiple characteristics at once. This makes it difficult to establish instances of multiple discrimination (discrimination across several axes of identity separately), let alone those of intersectional discrimination (discrimination across several axes of identity simultaneously), as these groups may not be reflected at all in the data. This reflects a lack of insight into intersectional and multiple discrimination, such as black women having the lowest-status jobs compared to white men.

The types of available data are important, as they might contribute to the overlooking of severe discrimination against certain groups. At the most basic level, there is a difference between empirical versus perceptual, or quantitative versus qualitative data. Beyond this distinction, Govender refers to event-based versus structural data. He uses the example of Equality Court case data as event-based, as the information consists of discrete events. This is indicative of the current reality of discrimination in some senses. Conversely, structural data represents a cumulative reality which has developed over time, such as the disproportionate representation in the labour market compared to that of the general population. Assessing the nature of discrimination in South Africa requires the use of all of these types of data to complement each other and build a complete picture of the state of discrimination nationally. While we do have all of these data types available in the country, some are over-represented, such as quantitative data. It is important to prioritise all types of data collection and dissemination to ensure that the broad picture and the details of discrimination are discernible.

## 4.7 Key findings: Responses by justice system and other independent bodies

### 4.7.1 Analysis of complaints before the Equality Courts

The Equality Courts were established under PEPUDA to enhance the right to equality. They adopt a simplified procedure and were meant to be informal, cheap, and expeditious. However, as shown in the study by Judge and Emdon, on average only 50 out of 382 designated Equality Courts were operational per annum between 2009-2017, which means that cases brought before these courts do not demonstrate the actual level of discrimination.

PEPUDA requires that the DOJ&CD collects relevant data on the Equality Courts' functioning; however, this provision is yet to be operationalised. Currently, the DOJ&CD collects some data, not always consistently, on the functioning of the Equality Courts. DOJ&CD Annual Reports provide information on the number and nature of cases before the Equality Courts, while the National Operations Centre (NOC), which operates under the DOJ&CD, has been designed to provide the most comprehensively disaggregated data on the Equality Courts. However, key challenges exist, including reliance on court clerks to provide relevant data on the cases before the Equality Courts; inconsistent data collection; and difficulties accessing the NOC data collection tool, which is not public.

Since 2014/15 the number of Equality Court cases has decreased, except in 2018/19, which saw 473 cases, with the highest number registered in KwaZulu-Natal and Gauteng. Despite this increase from 2017/18 to 2018/19, Judge and Emdon report 'a creeping decline in the usage of the court across all provinces over the six-year period [2012-2017]'.

Available data shows that complaints about unfair discrimination were the most common, followed by hate speech and harassment.<sup>91</sup> The NOC tool provides for the further categorisation of complaints based on unfair discrimination by subtypes. This indicates that race remains the most common ground for discrimination with a 50% increase from 2017/18 to 2018/19. Race is followed by 'any other ground', religion, disability, and gender. These statistics reflect our findings from the analysis of survey data, where race has constantly ranked first as a reason for discrimination.

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<sup>91</sup> See Annex 3. Available at [www.fhr.org.za](http://www.fhr.org.za).

The NOC is currently the only tool that provides a methodology to measure the level of discrimination based on culture, belief, conscience and pregnancy; however, it lacks an explanation of the terms ‘conscience’, ‘belief’ and ‘culture’.

The low percentage of annually finalised Equality Court cases is concerning. In 2017/18, only 12% of cases were finalised and another 3% withdrawn. The outcome is even worse for 2018/19, when 473 cases were enrolled before the Equality Courts but only 6% finalised and 2% withdrawn. According to Judge and Emdon, over six years (2012-2018) many cases were also either dismissed (26%) or referred to other fora (23%).

Although complaints in recent years were more likely to be filed by men, over the years, the differences in sex are negligible for both respondents and complainants. A complainant is most likely to be black African (75% in 2017/18; 63% in 2018/19), whereas a respondent is more likely to be either white or African, with companies ranking third. Complaints are most frequently filed by people between 20 and 40 years old. Only 1.6%-3% of all complaints were registered by people with a physical disability between 2016-2019.<sup>92</sup>

Of the six Equality Court cases that were analysed (as reported on SAFLII), three cases involved hate speech, three referred to discrimination, two were linked to harassment and one to incitement of violence. The cases were based on the following grounds: gender (3 cases); race; religion; and class (one per case respectively). Out of these six cases, four were ruled in favour of the complainant, one was dismissed, and one ruled in favour of the respondent (see Annex 3 for more details).

These statistics capture only the reported cases, leaving many that have never been brought to light. In this regard, the Equality Courts are only one of many fora, where individuals and/or companies can institute proceedings if their right to equality is violated.

#### **4.7.2 Analysis of complaints recorded by the SAHRC**

While complaints recorded by the SAHRC in 2018/19 increased slightly from the previous year (by 2.4%), the number of new complaints received dropped by 8%, as did the number of complaints finalised (5%). Equality complaints increased slightly in 2018/19 from 2017/18 and ranked first among all complaints (15%) that year, followed by complaints about socio-economic rights (11%), just administrative action (8.5%), and human dignity (8%). The majority of equality complaints were filed in Gauteng, the Western Cape, and KwaZulu-Natal. Most equality complaints in 2018/19 were related to race (65%), followed by disability (10%), and sexual orientation (6%).<sup>93</sup>

<sup>92</sup> 2018/19 NOC Annual Report.

<sup>93</sup> Information is drawn from preliminary statistics provided by the SAHRC. For more details see Annex 3. Available at [www.fhr.org.za](http://www.fhr.org.za)

#### 4.7.3 Analysis of complaints recorded by the CGE

The CGE states that most complaints were opened in Limpopo, the Eastern Cape and Mpumalanga, with gender-based violence, maintenance, gender discrimination and general discrimination as the most reported complaints in 2017/18.<sup>94</sup>

#### 4.7.4 Analysis of cases recorded by the LGBTI+ National Task Team (NTT)

The NTT on Gender and Sexual Orientation-Based Violence Perpetrated Against LGBTI+ persons and the Provincial Task Teams (PTTs) established by the DOJ&CD face several challenges which hamper full operational capacity (e.g. not all Provincial Task Teams have established operating Rapid Response Teams (RRTs)). Importantly, the case monitoring system developed by the NTT only traces the progress of cases; it does not provide detailed information about them. If case information is provided, it is often inconsistent and irregular. Its frequency also differs between provinces. For these reasons, it is difficult to obtain any statistical information from the existing template. Moreover, the reporting mechanism is focused on LGBTI+ hate crimes and excludes discrimination, hate speech and other forms of intolerance that are not hate crimes. The categories of hate crimes that are monitored by the RRTs contain the most serious criminal offences: murder, rape, sexual assault, or assault causing grievous bodily harm.

Additionally, the NTT relies on information from the SAPS, NPA or the judiciary, which means that any gaps in data collection from these entities are duplicated in the reports by RRTs. Coupled with the low reporting rates of discrimination and crimes against the LGBTI+ community, the number of cases reported through the NTT cannot be considered as reflective of the level of discrimination and violence against them. According to the NTT, in 2018 it noted 39 cases, as opposed to 27 in 2019.

### 4.8 Key findings: Review and assessment of government strategic plans and annual reports

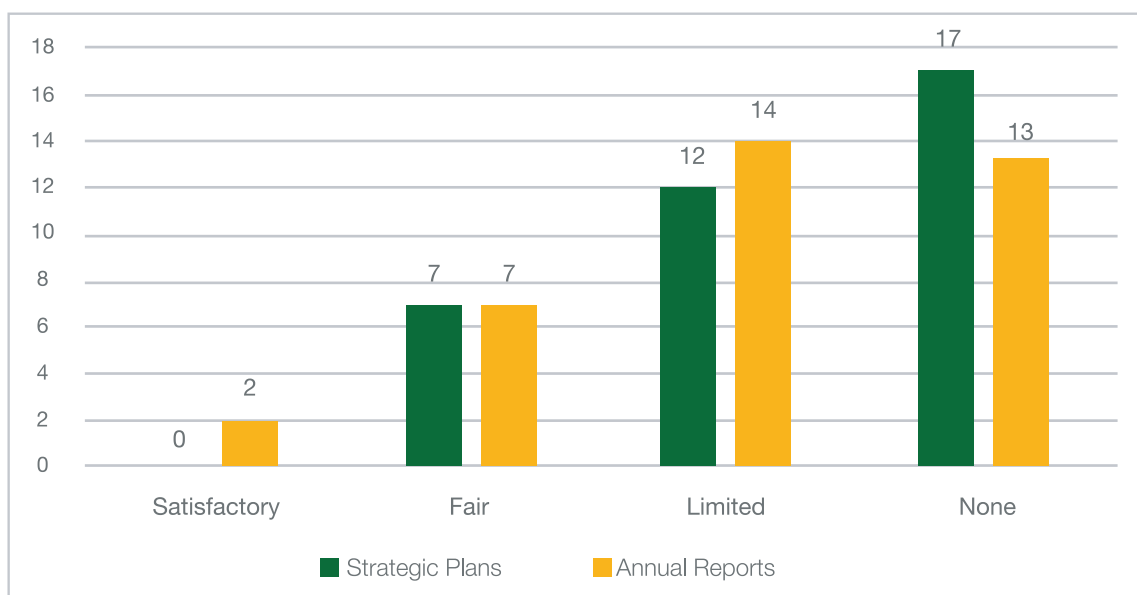
This component of the study focused on a comprehensive analysis of government's response to intolerance and discrimination through a review of departments' strategic plans and annual reports. One of the main objectives of the review was to assess the extent to which government departments align their strategies and objectives, and implement interventions with the NAP. The table below reflects the alignment of strategic plans and annual reports of 36 national departments 'per type of score' as explained earlier in this report.

As shown below, the majority of the strategic plans and annual reports analysed showed a limited or no alignment with the NAP (29 strategic plans, and 27 annual reports out of 36 departments analysed). In

<sup>94</sup> CGE, Annual Report 2017/18, p. 49.



Table 5: Alignment of Strategic Plans and Annual Reports with the NAP



contrast, only two Annual Reports were assessed as being ‘satisfactorily’ aligned with the NAP. A detailed breakdown of findings per government department can be gleaned from **Appendix I**.

The research draws a broad distinction between goals, objectives, indicators and measures that address outcomes of intolerance and discrimination, and those that address their so-called ‘root causes’. Addressing outcomes operates within a set framework provided by the equality provisions of the Constitution and subordinate legislation to operationalise its implementation, which government departments apply in executing their mandates. This explains why most of the NAP-related goals, objectives and interventions are mandate-related, and therefore focused on the immediate outcomes of intolerance and discrimination.

In contrast, there is currently no framework which provides the basis for departments’ goals, objectives and measures that address the so-called ‘root causes’ of intolerance and discrimination. It could therefore be argued that government departments are disadvantaged because there are no overarching guidelines that they can follow in designing and implementing their Strategic Plans. The study recommends that the NAP, in consultation with the Department of Monitoring and Evaluation, are in the best position to address this gap.

This distinction, and the associated framework, is closely linked to the measurement framework adopted by government to measure annual performance against strategic objectives. This measurement framework has a further impact on the type of goals, objectives and interventions, which are designed and implemented by the government. Accordingly, the mandate-orientated approach to goals, objectives and interventions has been perpetuated by nationally imposed requirements aimed at measuring achievements, on the basis of results-based and technical indicators. Although the latter are easier to measure and render achievements more tangible, they do not address the root causes of intolerance (i.e. perceptions or attitudes). This being said, mandate-related interventions may sometimes indirectly address the root causes of intolerance or discrimination (e.g. by increasing the number of women farmers, when it is shown that farming is not only a job for men). In contrast, goals, objectives and interventions which address the root-causes of intolerance and discrimination are unlikely to be reflected in technical indicators because they are, implicitly, more difficult to measure and, where they are measurable, tend to change over much longer periods of time.

Keeping the above distinctions in mind, there are a number of general findings based on the analysis of these plans and reports, which also serve to highlight areas where standardisation might be required to enable more consistent reporting in relation to the NAP. These include:

- Inconsistent ways of reporting by government departments in terms of strategic objectives and indicators. There is inconsistency in reporting by government departments in relation to formats, terminology and details regarding the achievement of targets. As a result, the analysis initially involved the strategic objectives but then was extended to strategic outcome-oriented goals, and where available, public entities linked with the department as well as conditional grants. For example, in their annual report, departments such as Arts and Culture provided more detail under performance information in relation to achievements when compared to other departments.
- Interventions by government departments are predominantly outcome-oriented. The analysis of interventions aligned with the NAP highlighted that, where available, measures and programmes implemented were mainly oriented on immediate outcomes of intolerance and discrimination. Departments operate within a certain framework that arguably favours measurements and achievements to be reported mostly as discrete, numerical outcomes which fit into government's framework of measuring targets annually. Such emphasis does not lend itself to enabling government departments to adopt longer-term interventions that address the root-causes of intolerance and discrimination.
- Limits of outcome-oriented interventions to women, youth, and people with disabilities. The outcome-oriented interventions were predominantly focused on addressing discrimination against women, children, youth and people living with disabilities, whilst only rarely addressing race or other grounds of discrimination. There are very few meaningful interventions addressing prominent issues of racism, xenophobia or intolerance and discrimination against LGBTI+ individuals.

- Departments mandated to deal with intolerance and discrimination are more likely to address and implement interventions focused on root-causes. Long-term measures that extensively address matters of intolerance and discrimination by dealing with their root-causes were often limited to departments responsible for priority groups. This is the case for the Department of Women and the Department of Social Development.
- There is no NAP-related framework that allows for the design, implementation and measurement of interventions as contained in the strategic plans and annual reports. Only a few departments link their mandate and strategic plans to the MTSF Outcome 14 (currently Priority Six): Nation Building and Social Cohesion, which is fundamental to the NAP. Other departments seem to neglect the issue of intolerance or discrimination as not linked to their mandate and responsibilities. This highlights the lack of understanding of the intersectional and cross-cutting nature of intolerance and discrimination, which affects all departments and should be understood by all departments.
- Measurable progress difficult to capture. Where NAP-related interventions are available, it is difficult to capture actual measurable progress. This is arguably linked to the fact that government departments work within the framework of their mandates and responsibilities, setting up their indicators and reporting on achievements based on departmental annual targets.

#### **4.9 Key Findings: Review of the 'Towards a 25-year Review: 1994-2019' document**

This section of the study analysed the key themes analysed in the chapters of the 25-year review document with a view to providing a high-level assessment of the focus of government, its shortcomings and recommendations in relation to the NAP. Below are some of the key findings extrapolated from this analysis.

The focus of government in addressing **nation-building, social cohesion and identity** has tended to be fragmented, legalistic and symbolic in character, targeting selected challenges which do not seem to be evidence-based, and focused on inequality to the detriment of race as one of the main reasons of divisions in the country and the major ground for discrimination. The focus does not seem to recognise that racism, xenophobia and discrimination based on language, ethnicity, and socio-economic status remain the biggest obstacles to reconciliation. In this regard, it does not recognise the NAP as a driving and guiding document for nation-building and social cohesion.

In terms of **gender and building a non-sexist South Africa**, the government has emphasised the progressive legal and institutional framework aimed at ensuring gender equality and eradicating gender-based violence (GBV); identified the main obstacles to gender equality (i.e. deeply rooted patriarchal culture, the historic denial of equitable rights and the inherited institutionalisation of discrimination); acknowledged the high level of violence against women; and identified key sectors affected by the lack of gender transformation such as land ownership, over-representation of women in the informal sector and the gendered nature of poverty. However, it has failed to admit that insufficient resources have been allocated to implementing measures to combat GBV, to developing data collection mechanisms that could inform evidence-based policy development, and to implementing the National Strategic Plan to Combat Femicide and GBV. Further, the review shows a lack of understanding about the differences between sex, gender, and sexual orientation, which is reflected in the failure to address intolerance and discrimination on the basis of non-binary genders, and intersex individuals, while it retains a binary understanding of identity and violence, and a consequent failure to recognise other forms of violence relating to more than just homosexuality and women.

In terms of **better quality health** for all, the government acknowledges the divisions between the private and public health system, and identifies a number of legislative, policy and programmatic interventions aimed at addressing socio-economic inequalities in accessing the health system. It highlights significant achievements in addressing the HIV/Aids and TB epidemics and makes recommendations for developing and implementing strategies to reduce the high rates of teenage HIV infections, rising levels of teenage pregnancies, and improve social determinants of health and youth friendly health services. However, the government's approach seems to lack an understanding of people's intersectional experiences when faced with the public health system and does not consider the extent to which access to health is ensured across disadvantaged or marginalised groups can be one of the best indicators of systemic discrimination on the basis of sex, race, socio-economic status, HIV status, sexual orientation, gender, nationality, etc.

In terms of **economic transformation**, government focuses on legislative, policy and programmatic interventions to implement affirmative action in changing economic dimensions in the country. It identifies inequality, poverty and unemployment as the main reasons for the slow progress in economic transformation and highlights several challenges faced in the achievement of economic empowerment: transfer of asset-building wealth to Africans; rampant unemployment particularly for youth; low share of self-employed people; racial composition of the workforce; and a decline in per-capita income and the slow progress in transformation of the racial composition of the workforce. However, it fails to acknowledge the interdependence between social and economic transformation and that the economic approach adopted has contributed to the deepening of

inequalities. Limited attention is given to economic transformation from a gender or disability perspective and to the implications of climate change for low-income South Africans, who are likely to be affected negatively and disproportionately. Similarly, there is limited analysis on the negative impact of corruption and state capture on basic service provision to low-income communities and small businesses.

In terms of **spatial planning and human settlements**, the government has addressed the subject quite comprehensively by looking at different elements (i.e. compact cities, public transport, spatial integration, leveraging local resources and addressing the needs of marginalised communities), while fairly acknowledging short-comings and challenges, which are significant and far-reaching. It places emphasis on policies and programmes adopted to address the apartheid-inherited spatial discrimination and divisions and makes a number of recommendations that are relevant to the NAP's implementation, while recognising that a number of its policies and programmes have either not been implemented adequately or been slow to produce results. However, while the government speaks about a comprehensive strategy, such a strategy is not included in its recommendations. It also does not deal with key factors affecting spatial planning, such as public transport, which contributes to systemic discrimination of marginalised and disadvantaged people.

In terms of **land reform and rural development**, government highlights the significant legislative and policy developments and programmes aimed at redress for people whose tenure of land is legally insecure because of past racially discriminatory laws or practices, while recognising the slow progress of land reform. It also admits that the current rural development approach revolves around service delivery, without sufficient focus on the spatial, structural, community mobilisation, and solidarity aspects of development. It emphasises redressing past injustices focusing on rural areas, disadvantaged farmers and communities, and recommends reconfiguring land reform regulatory regimes to ensure equality of access but fails to address the gender dimensions of land and agrarian reforms and the role of youth in the process, and it does not provide for any civic engagement in policy development.

In terms of **justice, crime prevention and building safer communities**, the government provides an account of the legislative, policy and programme interventions aimed at eradicating criminality, recognises some modest achievements in gender transformation of the judiciary while recognising limited inroads into racial transformation. Even though it highlights interventions aimed at eradicating violence against women and children, it fails to acknowledge other vulnerabilities that expose individuals to violence (e.g. the LGBTI+ communities; foreign nationals; people from disadvantaged communities), does not address the issue of hate crimes and of the gendered nature of crimes. It notes the importance of proactive crime prevention measures but fails to note the intersections between preventive interventions and social cohesion. While it identifies porous borders,

illegal migration and smuggling as key threats to the country, it fails to address the issue of xenophobia and xenophobic violence in the country.

In **building a better Africa and world**, the government highlights the numerous international and regional engagements that South Africa has been involved in during the last 25 years, as well as the negative consequences of xenophobia on foreign policy and engagements with other countries. Unfortunately, the government only focuses on xenophobia in the context of its foreign policy without acknowledging that addressing xenophobia requires government officials leading by example in denouncing xenophobia and intolerance. It also fails to acknowledge that South Africa's foreign policy lacks a consistent approach to combating racism, racial discrimination, xenophobia and related intolerances. In this regard, South Africa's foreign policy is not reflective of the NAP, which represents a missed opportunity for South Africa to champion the right to equality on the continent.

# 5. Conclusions and Recommendations



## 5 Conclusions and Recommendations

### 5.1 Conclusions

The findings from the different components of this study indicate that the country has made important strides in combatting racism and different forms of intolerance. This is particularly in relation to individual rather than systemic forms of discrimination. Whereas available data seems to show that significant proportions of the population do not experience different forms of discrimination and intolerance, there are nonetheless wide variations depending on the data collection tools used, how specific terms are defined (i.e. sex vs. gender), and how survey questions are worded (i.e. open-ended vs. prompted questions).

Despite gains made, the reported level of intolerance (perceptions of discrimination) is much greater than actual reported discrimination. The data analysed show that three out of five South Africans perceive that discrimination based on race exists, two out of five feel that discrimination based on nationality exists, while one third are of the view that discrimination based on poverty, wealth or unemployment status exists. Roughly between one quarter and a third of the population believes that there is intolerance based on gender, sexual orientation and of persons who are HIV-positive. Unfortunately, none of the surveys included direct questions on age-based intolerance.

Intolerance is also often closely linked to people's perceptions about being treated unfairly or unequally. Even though the majority of the population do not believe that they are being treated unfairly by others, one fifth of the population felt that they are, while similar proportions felt that they do not experience equality before the law and in their treatment by law enforcement agencies. Higher levels of intolerance towards foreigners exist, with foreign nationals from other African countries being the least-trusted group, followed by foreign nationals from non-African countries, and people of other races. In contrast, there seems to be a high level of religious tolerance and a high level of trust in people from other religious groups.

With regards to discrimination, one out of ten South Africans reported having been discriminated against in the previous two years. Race was cited as the main basis of discrimination followed by language, ethnicity, and socio-economic status. However, the attitudinal surveys analysed contained limited data on discrimination based on language or ethnicity. Further, this limited available data on discrimination based on ethnicity, together with data on levels of discrimination based on religion, sex, or gender varied widely across the surveys (between 1-16%). Available data on disability is also generally not reflective of this type of discrimination, since in principle,

it can affect only those who present one or more dimensions of disability. The surveys, however, tend to analyse the level of discrimination of the total population which serves to diminish its relevance.

As outlined in this report, the use of different methods of data collection and even subtle changes in the phrasing of questions makes cross-survey comparisons extremely difficult. This is compounded by differing definitions and usage of key terms such as 'sex', 'gender' and language, an ongoing understanding of sex as a binary concept that excludes intersex as a category and differing levels of disaggregation which enables the ability to generate data at sub-population levels. One of the surveys excluded disaggregation on the basis of disability, whereas none of them disaggregated data along key grounds of discrimination such as HIV/Aids status, culture, religion or marital status. Such omissions also impact on the ability to establish instances of multiple discrimination (discrimination across several axes of identity separately), and those of intersectional discrimination (discrimination across several axes of identity simultaneously). Additionally, surveys generally do not provide information on the source of discrimination (e.g. whether it is perpetrated by the state, by private institutions or individuals) thus making it difficult to assess more systemic forms of discrimination, namely discrimination related to how institutions might reproduce discrimination in terms of access, opportunities and outcomes.

Similar challenges were experienced with the administrative data analysed, which tends to assist in understanding such systemic forms of discrimination. In this regard, there has been a tendency to stratify data along racial, age and gender axes, to the exclusion of other significant marginalised groups who are discriminated against based on their sexual orientation, language, nationality, and disability. The 'invisibilisation' of discrimination on these grounds is also evident in the tendency by government departments to focus on racism and less so on issues of xenophobia and other related intolerances that form part of the NAP.

The assessment of responses by the justice system and independent bodies – focused on an analysis of complaints received by Equality Courts, the SAHRC, the CGE and the NTT – echoed some of the findings from the survey data as well as a number of data limitations. In particular, race figured prominently as a basis for complaints about discrimination. In terms of Equality Court data, complaints about unfair discrimination on the basis of race were the most common, followed by hate speech and harassment. Complaints based on race made up two thirds of the equality complaints received by the SAHRC in 2018-2019. As much as Equality Court data are valuable, these courts are not fully operational, while existing data collection systems are limited, incomplete and unable to provide an overall picture of reported cases of inequality and discrimination. Similarly, the case monitoring system developed by the NTT only traces the progress of cases, and either does not provide detailed case information or provides inconsistent and irregular information, and its frequency differs between provinces. Moreover, the reporting mechanism is focused on LGBTI+ hate crimes and excludes discrimination,

hate speech and other forms of intolerance that are not hate crimes.

The assessment of national government departments' strategic plans and annual reports also reflected a level of inconsistency in their alignment to the NAP. Overall, one annual report was considered as satisfactorily aligned, while the majority of strategic plans and annual reports exhibited limited or no alignment. There is significant variation on how government departments report on their strategic objectives and indicators. Interventions by government departments are predominantly outcome-oriented rather than aimed at addressing the root-causes of intolerance and discrimination, and focused on addressing discrimination against women, children and the youth as well as people living with disabilities, while only rarely addressing race or other grounds of discrimination. There are very few meaningful interventions that address predominant issues of racism, xenophobia or intolerance and discrimination against LGBTI+ individuals. Departments mandated to deal with intolerance and discrimination are more likely to address and implement interventions focused on the root-causes. Overall, however, there is no NAP-related framework that would allow for the design, implementation and measurement of interventions as contained in strategic plans and annual reports. Departments mandated to deliver on the Medium-Term Strategic Framework Priority Six (previously Outcome 14): Nation Building and Social Cohesion link their strategic plans to it; others simply neglect issues of intolerance or discrimination as not being sufficiently linked to their responsibilities. In the absence of such framework, where NAP-related interventions are available, it is difficult to capture actual measurable progress. These findings were also echoed in the analysis of the government's 25-year review.

## 5.2 Recommendations

The following recommendations are informed by the findings of the study and are presented with a view to guiding future work to enhance NAP implementation.

### 5.2.1 General recommendations

- As much as the NAP adopts a whole-of-society approach, government plays a critical role in giving effect to this plan. This should start with government developing a comprehensive understanding of the NAP rather than one being confined largely to Priority Six (formerly Outcome 14) or to addressing racism (to the exclusion of other forms of discrimination, xenophobia, and other related intolerances) and only to those departments that have been identified as contributing to Priority Six. The NAP must be incorporated into strategic government outcomes and should be a key document against which different departments adopt interventions and programmes over a five-year period. This is likely to require a prioritisation of the extensive list of actions as currently contained in the NAP.

- To give effect to the NAP there needs to be a shared ‘theory of change’ across government, showing how different interventions by different departments will get the country closer to achieving specific NAP outcomes over a number of years. In turn, this raises the need to enhance state capacity, with DPME and the presidency playing a guiding role, to adopt a coordinated approach to planning that moves away from government departments developing indicators, targets and interventions in silos, in a piecemeal fashion, which are predominantly short-term and event-based at the expense of longer-term interventions aimed at addressing root-causes and systemic manifestations of discrimination and intolerance. Such an approach to the NAP would also enable an on-going process of monitoring and evaluation of NAP interventions and targets as part and parcel of government’s quarterly and annual performance reporting.
- At a time when trust in government has been weakened, giving effect to the NAP further requires that all government actors, in implementing interventions to address discrimination and intolerance, do not reproduce the very discriminatory and intolerant practices that the NAP denounces. As much as awareness-raising and education needs to be conducted across society, there needs to be a zero-tolerance approach to discrimination and intolerance exercised by government officials and institutions, and accountability for such conduct with severe consequences, since government should lead by example. This requires a better understanding of systemic discrimination and how institutions such as government can work to reproduce patterns of discrimination.

### **5.2.2 Recommendations on data and measurement of discrimination and intolerance**

- Considering that this study focused predominantly on a number of different sources of existing data on discrimination and intolerance, there are a number of recommendations that are geared towards enhancing the collection of data to guide the implementation of the NAP.
- In order to facilitate comparison of quantitative data on different forms of discrimination and intolerance, there needs to be agreement on a set of questions, with similar wording and clear definitions of terminology that can be incorporated into different surveys to enable cross-survey comparison as well as an assessment of progress in NAP implementation over time. Such questions should allow for disaggregation of data, particularly on grounds of sexual orientation, language, nationality, disability, ethnicity, age and socio-economic status, which have tended to be neglected to date. This measure could enable not only a better understanding of different forms of discrimination and intolerance, but also a more detailed analysis of multiple and intersectional forms of discrimination. The adoption of questions could be a gradual endeavour, informed by the priorities adopted under the NAP, over time.

- Future quantitative surveys need to include questions on the sources of discrimination (whether individual or institutional) in order to contribute to an understanding and adoption of interventions to deal with systemic forms of discrimination. This has received limited attention to date. Such information could have the added value of serving as an accountability measure of the conduct and practices of institutions, particularly government.
- In order to gain a more in-depth understanding of different forms of discrimination and intolerance, future data collection should supplement quantitative data with in-depth qualitative studies to understand how discrimination and intolerance manifest themselves at a systemic level (i.e. analysis of how policies or legislation might discriminate against particular groups in accessing work opportunities).
- The NAP Technical Task Team should focus on ensuring that there is one integrated system of data collection for the Equality Courts, and alignment between data and information contained in the DOJ&CD and NOC Annual Reports. Further, to ensure that the data on cases is as comprehensive as possible, it should consider incorporating information from other courts that are also able to hear such cases.

## Appendix

Department	Overall Alignment with the NAP Assessment Score	Overall Alignment with the NAP (weighted average)	Mandate Related Goals and Objectives (weighted)	Substantive Goals and Objectives (weighted)	Isolated Goals and Objectives (weighted)	Symbolic Goals and Objectives (weighted)	Overall Alignment with the NAP Assessment Score	Goal Alignment with the NAP (weighted average)	Mandate Related Intervention (weighted)	Substantive Interventions (weighted)	Isolated Interventions (weighted)	Symbolic Interventions (weighted)
1 Agricultural, Rural development and Land Reform	Limited	2	5	0	4	0	Limited	2	5	0	4	0
2 Arts and Culture	Fair	4	5	5	0	4	Satisfactory	5	5	5	4	5
3 Basic Education	Fair	4	4	5	4	0	Satisfactory	5	5	5	4	4
4 Cooperative Governance	None	1	4	0	0	0	None	1	4	0	0	0
5 Communication	Fair	4	4	5	4	0	Fair	4	5	4	4	4
6 Correctional Services	None	0	0	0	0	0	None	0	0	0	0	0
7 Defense	None	1	0	0	3	0	None	1	0	0	4	4
8 Economic Development	Limited	3	0	5	4	0	Limited	2	4	0	4	0
9 Energy	Fair	4	4	4	4	9	Fair	4	4	4	4	0
10 Environmental Affairs	Limited	3	4	4	0	0	Limited	3	4	4	0	4
11 Health	Limited	3	0	4	4	0	Limited	3	0	5	4	0
12 Higher Education	None	1	0	0	4	0	Limited	2	4	0	4	0
13 Home Affairs	None	0	0	0	0	0	None	0	0	0	0	0
14 Human Settlements	None	1	5	0	0	0	Fair	4	5	4	4	0
15 International Affairs and Cooperation	None	1	3	0	0	4	None	0	0	0	0	5
16 Justice and Constitutional Development	Fair	4	4	5	0	0	Fair	4	4	5	0	0
17 Labour	None	1	3	0	0	0	None	1	5	0	0	0
18 Military Veterans	None	1	0	0	4	0	None	0	0	0	0	0
19 Mineral Resources	Limited	3	0	5	0	0	Fair	4	4	4	4	0
20 National Treasury	None	0	0	0	0	0	Limited	3	4	4	0	0
21 Office of the Chief Justice	None	1	5	0	0	0	None	0	0	0	0	0
22 Planning Monitoring and Evaluation	Limited	3	4	3	0	0	Limited	2	4	0	4	4
23 Public Enterprise	Limited	3	4	4	0	0	None	0	0	0	0	3
24 Public Service Administration	None	1	4	0	0	0	None	0	0	0	0	3
25 Public Works and Infrastructure	None	1	5	0	0	0	None	1	3	0	0	0
26 Science and Technology	None	1	0	0	3	0	None	1	4	0	0	4
27 Small Business Development	None	0	0	0	0	0	None	1	4	0	0	0
28 Social Development	Limited	3	0	5	0	0	Fair	4	4	5	5	0
29 Statistics South Africa	Limited	2	5	0	5	0	Limited	2	0	3	5	0
30 Telecommunications and Postal Services	None	0	0	0	0	0	None	0	0	0	0	0
31 Tourism	Limited	3	4	4	0	4	Limited	3	0	4	5	0
32 Trade and Industry	Limited	3	5	3	4	0	Limited	2	4	0	5	3
33 Traditional Affairs	Fair	4	4	5	0	0	Limited	3	4	4	0	0
34 Transport	None	1	0	0	3	0	Limited	2	4	0	4	4
35 Water and Sanitation	Limited	3	4	3	0	0	Limited	3	4	4	0	0
36 Women	Fair	4	0	5	5	5	Fair	4	0	5	4	4