

**Immigrants and xenophobia: perception of
judicial system personnel and experiences
of
Ethiopian immigrants in accessing the
justice system in Newcastle, South Africa**

**By
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DECLARATION - PLAGIARISM

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Abstract

The overwhelming number of people residing outside country of origin has created anxiety and fear in the immigrant receiving countries over the potentially destabilising effect on the country's resources. This may provoke controversy because of the fears that they may be competing unfairly with hosts for jobs, housing and other welfare services. Hence, migrants are increasingly becoming vulnerable to racism, xenophobia and discrimination.

The justice system protects the rights of migrants. Equal access to justice entails the right of migrants to initiate and proceed with legal matters through the justice system without hindrances. On the side of the state, access to justice also includes the obligation of the state to investigate violations and persecute the perpetrators according to the law. Hence, with this context in mind, this study explored the perception of justice system personnel on the services they provide to non-South African citizens, specifically to Ethiopian Immigrants in the Newcastle area. It also explored the experience of Ethiopian asylum seekers and refugees in interacting with the locals and in accessing justice system within the greater Newcastle area in the KwaZulu Natal Province. In total, 20 interviews were conducted, of which 8 are justice system personnel and 12 Ethiopian asylum seekers and refugees.

The findings suggest that the majority of justice system personnel perceive that foreigners are equal in the eyes of the law and get equal treatment as that of South Africans. It was found that the majority of justice system personnel lack knowledge of refugee law and this has been an obstacle in day to day running of courts. The findings also show that language services and Legal Aid are available to locals and as well as foreigners. It was also found that case dockets get lost due to corruption and negligence, and this resulted in impunity for some of the perpetrators of xenophobic violence.

The findings also suggested that asylum seekers and refugees agreed that the justice system is fair and that there are good provisions that accommodate everyone. Some, however, expressed discontent and claimed that they faced discrimination. They portray the police as unfriendly and indicated that they have experienced abuse and discrimination. The findings also suggest that police harass and abuse refugees by invading their premises without a search warrant.

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List of Acronyms

CDE: Centre for Development Enterprise
CoMRSA: Consortium for Refugees and Migrants in South Africa
DOHA: Department of Home Affairs
DoJCD: Department of Justice and Constitutional Development
HSRC: Human Science Research Council
NEPAD: New Partnership for African Development
NGO: Non Governmental Organisation
NPA: National Prosecuting Authority
ILO: International Labour Organisation
IOM: International Organisation for Migration
NPA: National Prosecuting Authority
OAU: Organisation of African Union
OHCHR: Office of the United Nations High Commissioner for Human Rights
RDP: Reconstruction and Development Program
SADC: Southern African Development Communities
SAMP: South African Migration Project
SAPS: South African Police Service
UMSA: Unemployed Masses of South Africa
UNHCR: United Nations Higher Commissioner for Refugees

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Chapter 1

INTRODUCTION

Humans have always been on the move. At present, there is an unprecedented increase in migration across international boundaries, partly due to the nature of the globalising economy, and, partly, in search of better lives. In addition people are forced to migrate because of political instability, wars, and natural disasters. It is estimated that one in fifty human beings is a migrant worker, a refugee or an asylum seeker living in a foreign country (ILO, IOM, OHCHR, 2001). According to United Nations Higher Commissioner for Refugees (UNHCR, 2011), there were 43.7 million forcibly displaced people worldwide. The United Nations and International Organisation for Migration states that about 150 million people live temporarily or permanently outside their countries of origin (ILO, IOM, OHCHR, 2001).

The International Organisation for Migration (IOM) predicts that the total number of international migrants will reach 250 million by the year 2050 (ILO, IOM, OHCHR, 2001). The overwhelming number of people residing outside country of origin has created anxiety and fear in the immigrant receiving countries over the potentially destabilising effect on the country's resources. This may provoke controversy because of the fears that migrants may be competing unfairly with hosts for jobs, housing and welfare services. Hence, they are increasingly becoming vulnerable to racism, xenophobia and discrimination¹ (Adepoju, 2003; Cross and Omoluabi, 2006; UNHCR, 2011). Cross and Omoluabi (2006) state that migration from Eastern Europe, the Far East, North Africa and other poor regions to the European Union countries has created acute fears of overwhelming budgets and services and overbalancing job markets. South Africa has also been indicated as one of immigrant receiving destinations (Cross and Omuluabi, 2006).

¹ Discrimination means “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on equal footing of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”(IOL, IOM, OHCHR, 2001:1). Racism and xenophobia are different, although they sometimes overlap. As IOL, IOM, OHCHR(2001:2) put it, “ while racism generally implies distinction based on difference in physical characteristics, such as skin colouration, hair types, facial features, etc, xenophobia denotes behavior specifically based on the perception that the other is foreign to or originates from outside the community or nation”

South Africa's transition from apartheid regime to the new democratic state attracted many immigrants from Africa and other parts of world. There is a marked difference in economic development and living standards between South Africa and other African countries. Despite the tightening of anti-immigration legislation; unemployment, rampant poverty, inequality, crime, and the problem of the HIV/AIDS pandemic, South Africa is perceived to be a land of hope and economic opportunities and continues to attract many immigrants, especially from other African countries (Adepoju, 2003; CDE², 2008; Class Struggle Magazine, 2008; Maharaj, 2004). The reconciliatory leadership stance of South Africa's first democratically elected president, Mandela and the African Renaissance initiative by his successor former president Thabo Mbeki, brought hope to many that the new South Africa would welcome immigrants and respect their right to reside and work. It was argued that South Africa had a moral obligation to be hospitable to fellow Africans because of the role many African countries played in the struggle against apartheid regime (Croucher, 1999; Adepoju, 2003).

Competition over business opportunities, housing, public services and jobs create tension between locals and refugees, asylum seekers and migrants. These tensions have often found xenophobic expressions, which also further exasperated the conflict around resources and jobs (UNHCR, 2011).

Although there are many other migrants in South Africa from Europe, the Americas, Australasia and the Middle East, African migrants are mostly vulnerable to xenophobia and discrimination compared to migrants from elsewhere. As Valji (2003:4) puts it "intolerance is targeted exclusively at blacks from other African countries". An increasing number of South Africans perceive fellow African migrants from the continent as a threat to their economic livelihood and responsible for the rise in all the social ills of the country (Adepoju, 2003; Haigh and Solomon, 2008). As a result, some commentators make use of the term Afrophobia and Negrophobia –hatred or fear towards African migrants when referring to this phenomenon (Gqola, 2008; Hassim, Kupe and Worby, 2008; Mngxitma, 2010; Thakur, 2011).

Landau, Ramjathan-Keogh, and Singh (2004:2) state that "[there] is strong evidence that non-nationals living and/or working in South Africa face discrimination at the hands of citizens, government officials, the police, and private organisations". Solomon (2003) underscores that

² CDE stands for Centre for Development Enterprise

there is growing evidence that South Africans as a whole are becoming more xenophobic in their attitudes towards migrants generally and African migrants in particular. Similarly, Crush (2001:11) claims that South Africans became increasingly hostile towards foreigners from the mid 1990s: “[focus] group studies of South African political attitudes in 1995 were the first to unveil a surprising amount of latent hostility towards foreign migrants. Local studies of particular communities have since confirmed that many black foreign citizens feel that there is considerable verbal and physical antagonism towards their presence”.

Consortium for Refugees and Migrants in South Africa (CoRMSA) documented the nationwide xenophobic attacks that took place in May 2008 when 62 people were killed; at least 670 wounded; dozens raped, more than 100,000 displaced and millions of Rands worth of property destroyed or looted by the perpetrators (CoRMSA, 2009). As Laher (2009) notes, South Africans deemed to be migrants were also among the victims. The government was compelled to open numerous refugee camps to shelter those who were displaced.

There was a warning that there would be a repeat of the 2008 xenophobic attacks after the culmination of the 2010 soccer world cup that South Africa hosted (CoRMSA, 2011). Although there were no reports of widespread incidents like that of 2008, there were sporadic events that were reported after the end of the world cup. CoRMSA made an impressive documentation of these incidents. According to the CoRMSA (2011) report, about 200 foreign run shops were looted; there were at least 40 serious injuries, and at least 20 deaths due to violence targeting non-South Africans. The report also indicates that some groups of foreign nationals, about 1000 in number, were displaced. In terms of geography, Gauteng and Western Cape are the most affected provinces, but there have been reports of serious events almost in every province (For complete summary of incidents, see appendix 1). As the CoRMSA (2011) report shows, attacks on foreign shops, especially those that are owned by Somalis, were common targets of violence. CoRMSA (2011) mentions that the attacks were more than a desire to steal, as they involved prior political mobilisation and excessive violence, without the corresponding theft of goods.

The justice system protects the rights of migrants and equal access to justice incorporates the right of migrants to initiate and proceed with legal matters through the justice system without hindrances. On the side of the state, access to justice also includes the obligation of the state to investigate violations and persecute the perpetrators according to the law (SAHRC, 2010).

Hence, with this context in mind, this study will explore perception of justice system personnel on the services they provide to non-South African citizens. It will also explore the experience of Ethiopian asylum seekers and refugees in interacting with the locals and in accessing the justice system within the greater Newcastle area in the KwaZulu Natal Province.

Given the importance of discussing key concepts that are related to this study, the meanings of xenophobia, asylum seeker, refugee and justice system personnel are briefly explained in the following section. It is relevant to elaborate these concepts so as to make clear of their meanings within the context of this study.

1.1 Xenophobia

Xenophobia is derived from a Greek word, 'xenos' meaning foreigner and 'phobia' meaning fear. Tshitereke (1999:4) describes xenophobia as "[deep] fear and dislike of the unknown. This subjective fear and absolute dislike seems to have translated itself into intense tension and violence by South Africans towards immigrants". The meaning of xenophobia as the literal translation of hatred or fear of foreigners is misleading. It encompasses broad issues. The Human Science Research Council³ (2008:10) states that: "[xenophobia] is pervasive in a broad sense and is related to an accumulation of many different negative attitudes rather than a consolidated mindset. It is caused less by competition for jobs and resources than usually expected and at least as much by personality attributes and ethnic loyalties among local people."

CoRMSA (2011:57) asserts that "xenophobic actions should be defined as any discriminatory or criminal action which is targeted at foreign national because of the systemic disadvantage associated with being foreign". For the purposes of this study, this definition will be adopted because the disadvantages of being a foreigner includes experiencing discriminatory practices such as difficulty in accessing various services such as police protection, community protection, courts, banking, health etc.

³ Human Science Research Council is abbreviated as HSRC

1.2 Migrants

If you move from one country to another, you become an international migrant (Weeks, 1999). Lucas and Young (2003: 101) define international migration as “long term permanent movement of people across international frontiers”. By long term, the authors meant duration of a year or more. The South African White Paper on International Migration (1999:52) defines international migration as “travel across international boundaries so as to temporarily change ones place of residence”. So migrants, according to this definition, are not permanently based in South Africa. For the purpose of this study, the definition of migrants from the South African White Paper on Migration will be adopted.

1.3 Refugees

Refugees are people seeking asylum in a foreign country because they fear persecution for reasons of race, religion or membership of a particular social or political group if they return to their own country (Lucas and Young, 2003: 106). The UNHCR (1998: 2) defines refugee as a “person fleeing from individual persecution, generalised human right violations, or armed conflict in their country of origin”. A person becomes an asylum seeker before refugee status is granted. An asylum seeker is therefore, a person whose asylum claim has not yet been examined to ascertain whether his/her fear of persecution is well founded (UNHCR, 1998). For the purposes of this study, the concepts of refugees and asylum seekers from the UNHCR perspective will be adopted.

1.4 Justice system personnel

Employees of the various Departments of Justice who are involved in the protection of the public and also in the investigation and prosecution of criminal offences are part of the justice system. Within the South African context, this includes the National Prosecuting Authority (NPA), South African Police Service (SAPS), magistrates and judges. NPA’s role is to institute and conduct criminal proceedings on behalf of the state. It is the duty of NPA to support the investigation of a case. SAPS have responsibility to fight, prevent and investigate crime. It also ensures that criminals are brought to justice. Magistrates and judges are officers of the state in charge of administrating justice. They enforce laws within their jurisdictions. They preside over civil and criminal cases and they have no prior knowledge of the facts or

evidence when they sit in court. They have no allegiance to the state and act neutral. For the purpose of this study, Legal Aid attorneys form Legal Aid Board and Immigration officers from Department of Home Affairs (DOHA) are included with the justice system personnel. The Legal Aid Board is an autonomous body and it renders legal representation at the expense of the state for those people who cannot afford to hire their own lawyer. Immigration officers check legal status of foreigners and also facilitate residence permit of foreigners. Although they are independent, this study will incorporate them as being part of the justice system because they work closely with Department of Justice and assist migrants.

1.5 Problem statement

International migration creates ethnic and racial diversity. As a result of this, many countries are becoming multiethnic and are faced with the difficult task of accommodating people of various cultures, races, religions and languages (ILO, 2001). The Bill of Rights of the 1996 Constitution of South Africa provides a pillar towards a democratic society. It embraces the right of all people in South Africa and affords democratic rights of human dignity, equality and freedom. As Maharaj (2004) notes, the rights of non-South Africans have been debated extensively. It was argued that there are many South Africans who do not have access to proper health care and education. Critics question whether it is appropriate to offer these services to non- South Africans. On the other hand, those who sympathise with migrants argue that there were many South Africans who were granted asylum and support in African countries while they were in exile during apartheid regime despite the poverty of the host countries.

Amisi and Ballard (2005) mention that refugees face many problems in South Africa- with little livelihood opportunities, inability to access services such as health and education, poor provision of documentation from the Department of Home Affairs and xenophobia experienced daily in institutions and public settings.

Focusing on Ethiopian immigrants and using the justice system personnel from magistrate courts and police stations around Newcastle cluster, the research will address the following key questions:

- What are the experiences and perceptions of asylum seekers and refugees on the justice system's services they receive?
- What problems (if any) do asylum seekers and refugees encounter when interacting with the locals and accessing these services?
- How do justice system personnel respond to the needs of refugees and asylum seekers? What are the perceptions and attitudes of judicial system personnel on services they render to refugees and asylum seekers?

1.6 Aims and objectives of the study

To address the research questions mentioned above, this study will explore South African justice system services provided to non-South African citizens in Newcastle area from the perspectives of justice system personnel as well as Ethiopian asylum seekers and refugees. It will also explore the experiences of Ethiopian refugees and asylum seekers in interacting with the locals. The main objectives are:

- To explore refugees' and asylum seekers' experiences, perceptions and opinions on the services they receive from the justice system and their experiences in interacting with the local people;
- To explore if there are any problems related to accessing services offered by the South African justice system and if there are, how such problems affect asylum seekers and refugees;
- To explore the perceptions and attitudes of justice system personnel on the services they render towards foreigners;
- To make recommendations from the findings to institutions that are directly involved in providing public service.

1.7 Theoretical approaches on xenophobia and racism

There is no stand alone theory that explains why xenophobia and racism are directed against migrants. Several theories and hypothesis have been put forward by various scholars. For the purpose of this study, based on the works of Wimmer (1997), four explanations of xenophobia and racism are considered. In the South African context, three hypotheses, drawn

from the works of Harris (2001 and 2002) will be considered in the literature review of Chapter 2.

1.7.1 Rational choice theory

According to this theory, xenophobia and racism occur because of the fierce competition between migrants and locals for jobs and other amenities such as housing. Wimmer (1997: 19) notes that rational decision model takes “the xenophobic vision of a wave of job seeking foreigners at par value”. This means that locals show xenophobic attitude towards foreigners because of the belief that they strain government resources by increasing unemployment. Wimmer (1997) mentions that several governments in Western Europe followed rational choice theory and they restricted labour immigration to their countries.

1.7.2 Functionalism

According to this theory, the cultural difference between migrants and the host communities is the main cause for tensions with the natives. Hence, according to the functionalist point of stance, ‘the inability of certain minorities to integrate into the structure and culture of the host society leads to the majority population to xenophobic rejection of minorities’ (Wimmer, 1997:22). This theory therefore favours the preservation of one’s own culture and is not open towards a diverse multicultural society. Migrants are believed to distort cultural homogeneity and face discrimination and xenophobia from host countries. The core of this theory is thus fear of loss of social status and identity as people prefer to be surrounded by their own kind rather than being exposed to foreigners with other cultural and social background (Mokegwu, 2005).

1.7.3 Discourse theory

This theory explains how labeling foreigners as ‘others’ results in the marginalisation of migrants by the dominant native groups. In support of this, Wimmer (1997:25) makes the point that “concepts of cultural distinctiveness, inability to assimilate, and unbridgeable cultural difference form the basic element of a concept of otherness which helps to exclude immigrants from the core social groups and to establish domination over them”. This discourse of exclusion and self empowerment is perpetuated by officials and they institutionalise it in different public policies such as immigration policies. In a similar tone,

Neocosmos (2006) argues that this process of exclusion is a political one, in that the state plays a major role in excluding politically marginalised groups. As Amisi et al. (2010: 20) put it, “xenophobia means exclusion from the community, i.e., exclusion from its citizenship, rights and duties and connected to the facts of belonging and not belonging”.

1.7.4 Phenomenology

According to this theory, xenophobia and racism towards foreigners have less to do with the increase of foreign population, but rather with overall crises of the whole society. Wimmer (1997: 27) explains that “such deep-gripping crises occur again and again after intensive phases of modernisation if the promises of societal model-for instance, that of the social welfare state-can no longer be kept and therefore ‘anomic tensions’ spread over all social positions”. Hence, according to this model, racism and xenophobia are seen as channels of reassuring the national self and its boundaries as an effort in making sense of the world in times of crises (Ibid).

1.8 Organisation of dissertation

Chapter 1: The introduction sets the background of the study. It explains the extent and magnitude of international migration and the problems migrants face in the destination countries. Basic concepts of this study such as migration, asylum seekers, refugees, and xenophobia and justice system personnel are described. The main research question and the need to undertake this study as well as the theoretical approaches of this topic are briefly explained.

Chapter 2: This section gives a glimpse of globalisation, xenophobia and its effect on labour mobility. The experience of other countries in dealing with xenophobia is also discussed. It then briefly outlines the South African migration history and proceeds to discuss the reasons why xenophobia is directed against African migrants in post apartheid South Africa by reflecting from three different hypotheses: scapegoating, isolation and bio-cultural hypothesis. It also reflects how media, politics, public violence and vigilantism aggravate xenophobia in South Africa and finally looks at how the South African justice system responded to the xenophobic violence.

Chapter 3: Methodology describes the study setting and the choice of the case study; research methods and data source; challenges in the field work; analysis method; ethical considerations and limitations of the study.

Chapter 4: Perception of justice system personnel and experiences of Ethiopian immigrants in accessing justice system describes the encounters of the Ethiopian immigrants in accessing justice system. It also discusses the perception of the justice system personnel on the services they provide to non- South Africans.

Chapter 5: Conclusion draws on the major findings and key arguments and summarises the study. It also gives recommendations.

Chapter 2

LITERATURE REVIEW

The aim of this chapter is to give a review of the existing literature related to this study and to identify the common themes that have been raised by various authors. Firstly, it gives a glimpse of globalisation, xenophobia and their effect on labour mobility. Xenophobia is not unique to South Africa and this literature review will briefly consider experiences from other countries and how these countries responded to it. It then briefly looks at the South African migration history and proceeds to discuss the reasons why xenophobia is directed towards African migrants in post apartheid South Africa by reflecting from three different hypotheses: scapegoating, isolation and bio-cultural hypothesis. It also reflects how media, politics, public violence and vigilantism aggravate xenophobia in South Africa and how the South African justice system has responded to the xenophobic incidents.

2.1 Introduction

The world is becoming highly interconnected and globalisation has become the order of the day. Globalisation has been associated with increased flows of goods, capital and labour. The movement of people across international borders in search of better life forced by events such as war, conflict and political instability has dramatically risen. In the mid 1990s, of the 80 to 120 million of estimated immigrants globally, Sub-Saharan Africa accounted for 35 to 40 million (Nyamnjoh 2006). According to Taran (2002), in the beginning of 21st century, the total number of foreign persons living outside of their countries of origin worldwide was estimated at 175 million. Some of the labour movement can be described in terms of ‘brain drain’, with skilled workers migrating to developed economies. On the other hand, a large number of those in less skilled or unskilled occupations migrate to neighbouring countries or other nations that are more developed than theirs (ILO, IOM, OHCHR, 2001). The notion of nationality and citizenship have become important features in defining who belongs and who doesn’t in the era of globalisation (Williams and Carr, 2006). In this context of globalisation, the control of borders has become more important as the opening up of economies and markets was accompanied by increased mobility of labour (Minnaar, 2000).

There are two contradictory trends in the era of globalisation- controlling immigration on one hand, yet encouraging the free movement of capital and goods on the other (Maharaj and Moodley, 2000). Unlike free movement of capital, labour has been fiercely regulated. In principle, it is said that the movement of labour between countries should be economically useful for both sending and receiving countries. Despite this, while unrestricted movement of goods and capital is widely accepted, the movement of labour tends to raise sensitive political and sociological issues (ILO, IOM, OHCHR, 2001). It has raised insecurities and anxieties, especially to the migrant receiving countries and has manifested into what Nyamnjoh (2006:1) refers as “greater obsession with citizenship and belonging”. This has resulted in xenophobic tendencies and intolerances. The response by many countries has been tightening of immigration policies and for locals to have negative sentiments towards foreigners (Taran, 2002; Nyamnjoh, 2006).

While there has been a growing anti-foreigner sentiment in South Africa, xenophobia is not unique to the country. As Taran (2002:4) puts it, almost “every country appears to be experiencing increasing manifestations of hostility and violence against non-nationals-migrants, refugees, immigrants, even sometimes students and tourists”. Various incidents of discrimination were documented internationally (Valji, 2003). Xenophobia is a global problem experienced in both the industrialised countries and the developing world. Currently, racism and xenophobia are recognised as one of the main societal and political problems in Europe. Brem (2002:481) notes that the heads of States and the Council of Europe were “alarmed by the present resurgence of racism, xenophobia and anti-Semitism; the development of climate of intolerance; the increase in acts of violence against migrants and people of immigrant origin and the degrading treatment and the discriminatory practice accompanying them”. Moge kwu (2005: 8) notes that “[xenophobia] is as much a reality in Germany, Belgium and the United Kingdom as it is in China, the Ivory Coast and South Africa. It is neither indigenous to any particular part of the world, nor alien to any”. According to Crush and Pendleton (2004), Southern African countries have shown various levels of anti-foreigner sentiments. A National Immigration Policy Survey was conducted by Southern African Migration Project (SAMP) in 2001-2002. The survey was undertaken in five SADC countries: Botswana, Mozambique, Namibia, Swaziland and Zimbabwe. It was based on common questionnaire administered by teams of researchers from each country. In total, 4763 interviews were conducted. The South African National Immigration Survey was conducted by SAMP in 1999. To make the surveys from the five countries comparable with

South Africa, the data set from the 1999 SAMP's National Survey was used. The aim of the survey was to measure citizen knowledge of migration, attitude towards foreigners and immigration and refugee policy preference. The following table summarises regional attitudes towards immigration among the six SADC countries.

Table 2.1: Regional attitudes towards migration

What should government do about people from other countries? (%)							
	South Africa	Namibia	Botswana	Zimbabwe	Mozambique	Swaziland	Total
Let any one who wants to enter	2.2	2.9	3.3	12.3	7.0	10.9	6.1
Let people as long as jobs are available	13.1	4.5	18.0	14.6	31.5	20.6	16.8
Strictly limit numbers of foreigners who enter	63.7	82.5	68.3	68.9	57.8	64.9	67.5
Prohibit all from entering	21.0	10.2	10.4	4.2	3.7	3.5	9.7
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0
N=4547							

Source: Crush and Pendleton, 2004: 10

From the six SADC countries shown from the table above, Botswana, Namibia and South Africa were found to have the highest level of anti-foreigner sentiment (Crush and Pendleton, 2004).

Croucher (1999) states that immigration laws around the world are becoming tighter and nations have the tendency to be more conservative in the way they treat immigrants. Right wing political parties⁴ in Western countries such as France, Germany, Sweden, Norway as well as Switzerland have risen (Skenderovic, 2001). It has now become difficult to gain entry into many developed countries as they have made their immigration laws strict to discourage the influx of asylum seekers and other migrants. Even though migrants can and do contribute to positive economic development, they continued to be victims of physical assault, xenophobia, racial abuse and discrimination. The rise of right wing political parties in different parts of Europe had negative impact on international migration. These extremist right wing parties have garnered support by “exploiting local anxieties over immigration in the era of globalisation” (Nyamnjoh, 2006: 7).

Levels of state surveillance and exclusion as well as violence towards immigrants have intensified. Around the world, attacks on Ethnic minorities and foreigners in general have increased. In Russia, Africans are repeatedly attacked. A former ambassador to South Africa, the wife of another ambassador and a minister counselor were reportedly attacked by a group of young men in different incidents (Nyamnjoh, 2006). In England, France and Germany, conservative parties have successfully used xenophobic issues against social democratic governments, and in all of these countries, it was important in bringing them to power (Thranhardt, 1995). In France, the 2003 presidential elections saw how the ultra- right wing Front National party defeated the Socialist opposition party using anti-immigration rhetoric (Nyamnjoh, 2006). In Germany, an increased amount of xenophobic sentiment and a growth of extreme nationalist parties have been observed. In Finland, it has been found that about 10 percent of its population held strong xenophobic sentiments (Haigh and Solomon, 2008). In the USA, after the September 2001 attacks, Arabs and Muslims have been discriminated against and xenophobic sentiments towards them are rife. As Nyamnjoh (2006: 11) explains: “[the] attacks on foreigners in Russia, the growing influence of right wing parties in Europe,

⁴ Right wing political parties are those with conservative stance. Those in the right usually support individualism. Libertarians, reactionaries, capitalists, monarchists, nationalists and fascists are some examples (Griffith, 1998).

and the physical attacks on Arabs/Muslims in the United States mark a growing shift to the right in politics, and an emphasis on the purity of belonging that can only heighten a worrying impatience with the very difference that the ongoing rhetoric of globalisation celebrates”.

2.2 Response to xenophobic violence: examples from different countries

According to Haigh and Solomon (2008), Germany, Finland, Russia and Switzerland have experienced xenophobic violence. Different measures were taken to respond to the violence. In Germany, the government responded by expanding the number of police and prosecutors trained to investigate and prosecute xenophobia related cases. In addition, measures were taken to monitor and report the results of the prosecution of crimes against foreigners; monitor and report the types of sentences imposed on those convicted of committing crimes against foreigners and investigate the patterns of police brutality against foreigners. They also recognised the need to recruit police officers from different ethnic and national backgrounds. In Finland, the government passed a law on the integration of immigrants and reception of asylum seekers. The aim was to promote integration, equality and freedom of choice of immigrants through measures which help them to ensure essential livelihood and welfare of asylum seekers and immigrants. In Russia, the president instructed the chief prosecutor to enact legislation that bans organisations with xenophobic agenda. Security forces have also been instructed to be more visible and act against xenophobic violence. In Switzerland, since 2001 the government has allocated \$10 million per year for integration projects. It has also founded a national forum for immigration, which brings together all foreign communities living in Switzerland (Haigh and Solomon, 2008).

Before situating xenophobia within the South African context, it is worthwhile to briefly discuss migration history of South Africa. The next section considers an overview of South African migration history.

2.3 Overview of South African migration history

During apartheid, South Africa made deliberate moves to continuously attract and control immigration (Oucho, 2007). It had discriminatory migration policy, attracting only those

deemed desirable by the previous regime. Historically, the apartheid government widely supported European immigration to South Africa. The 1937 Aliens Act described a desirable immigrant as one of European heritage, who would easily mingle in the white population of the country (Valji, 2003). The Act was intended to exclude German Jews who fled to South Africa from the Nazi regime. The term alien has a negative connotation, as it not only suggests that migrants are not welcome, but also implies strangeness and otherness (Haigh and Solomon, 2008). The government actively encouraged whites with European roots to settle in South Africa, giving them free access to the territory. Migration from other parts of the African continent was prohibited with the exception of temporary labourers who were allowed to work in agriculture, mining and domestic sectors (Morris, 1998; Maharaj, 2004; Zuberi and Sibanda, 2004; Nyamnjoh, 2006). Between 1960 and 1987, close to 900, 000 whites formally immigrated to South Africa (Morris, 1998). Caucasians were actively encouraged to immigrate and they were given financial assistance by the government. The majorities of the managerial and skilled jobs were reserved and made available to be filled by people whose racial classification, in terms of the Population Registration Act of 1950, was white (Morris, 1998).

After the demise of apartheid, South Africa opened up its borders and was exposed to global trends economically, politically and socially. The new government embraced the principle of an inclusive vision for the country and this is reflected in the 1996 Constitution. The South African Constitutional Court approved one of the most progressive Constitutions ever to be promulgated. The Constitution of South Africa states in its preamble that “South Africa belongs to all who live in it, united in diversity” (Republic of South Africa, 1996:1). Besides the Constitution, the rights of foreigners are affirmed in international agreements to which South Africa is a party. The Universal Declaration of Human Rights, the African Charter for Human and People’s Rights as well as the International Covenant on Civil and Political Rights all commit South Africa to respect and ensure basic human rights of individuals within its boundaries regardless of social or national origin (SAHRC, 2010). Other initiatives by the new government included the African Renaissance, a move aimed at strengthening ties with the rest of the continent. This was later known as New Partnership for African Development (NEPAD). Former president of South Africa, Mr. Mbeki, was strong advocate of NEPAD. It was hoped that the new South Africa will not only welcome migrants, but will also respect their rights to live and work in the country (Adepoju, 2003; Landau, 2004). Most of the

migrants come as asylum seekers, traders, students, professionals and entrepreneurs (Minnaar, 2003; Nyamnjoh, 2006).

Despite the inclusivity and diversity rhetoric by the new South African government, official immigration and migration laws have been strict and were, as Peberdy (2001:16) notes, “characterised by powerful xenophobic and exclusionary discourses centered on migration from the rest of Africa”. Minnaar (2000:3) similarly mentions that “the immigration policy in South Africa can be typified as being restrictive and exclusionary rather than rights based”. Crush (1999) argues that this is because of the migration policy that was inherited from the apartheid regime that was rooted in abusive practices. White employers and those in the mining industry were exempt from normal immigration legislation and hence, this led to legislation and practice that contradicts with the current government’s commitment to “transparency, equality, accountability and fundamental human rights” (Crush, 1999:1).

Foreigners, especially of those undocumented migrants were abused by public officials and the South African populace in general (Minnaar, 2000; Crush and Williams, 2002a). According to Minnaar (2000), the Aliens Control Act 96 of 1991 continued to govern the immigration policy of post apartheid state. The Aliens Control Act allowed the police or immigration officers of the Department of Home Affairs Internal Tracing Units to stop any person suspected of being undocumented. They could ask for South African ID or the passport for any person they suspect. The law also allowed the police to search people and premises without a search warrant. Suspects arrested could be detained promptly at a detention facility or at a police cell without being allowed to gather any personal possession they might have accumulated in South Africa (Minnaar, 2000).

Maharaj (2004) states that the Aliens Control legislation conflicted with the internationally accepted human rights practices and the South African Constitution. As this was passed during the previous apartheid regime, it was not in line with the democratic principles of the new South Africa. It was consequently amended in 1995 and again in 1996 to make the relevant sections of the legislation in line with the new Constitution (Peberdy, 2001).

In May 1997, The Green Paper on International Migration was drafted and it recommended a migration policy which was humane and consistent with the Bill of Rights of the new Constitution. The draft paper acknowledged South Africa’s historical and political

connections with SADC countries. It suggested that the issues of undocumented migrants from the region could be dealt with by allowing them to participate in the economy legally. Home Affairs officials were not happy with the recommendations of the Green Paper and hence, the White Paper on migration was only released in March 1999(Maharaj, 2004).

The White Paper considered the geopolitical and transnational economic dynamics of migration in the context of globalisation. However, this was criticised as it echoed the popular xenophobic view that migrants competed with locals for jobs, that they committed crimes, contributed to corruption as well as strained on social services. The provisions of the White Paper were eventually translated into the Immigration Bill, which was adopted as an Act by the National Assembly of the parliament at the end of May 2002 (Maharaj, 2004). In practice, the introduction of the new law was very slow. Due to many legal and constitutional challenges, the Act on International Migration came into force only in 2003 and hence the Aliens Control Act, though amended, continued to regulate the immigration policy (Valji, 2003).

Protection for refugees in Africa is based on both the 1951 United Nations Convention Related to the Status of Refugees and the 1969 Organisation of African Unity (OAU) Refugee Convention Governing Refugee Affairs in Africa (McKnight, 2008). Although South Africa signed a basic agreement with UNHCR in 1993 and although it is a member of OAU and the United Nations Refugee Conventions in 1995 and 1996 respectively, there was no piece of legislation that considered the plight of refugees and asylum seekers before 1998. Specific legislation for granting refugee status for asylum seekers was only passed in November 1998 through the Refugee Act. The Refugee Act considered both the OAU and the UN conventions and provisions were made to speed up the asylum and granting of refugee status by setting up a standing committee for Refugee Affairs as well as formal Refugee Appeal Board (Valji, 2003).

For the first time in South African legislation, the Refugee Act made provisions for clear asylum procedures that are in line with the UNHCR guidelines. It guarantees protection to refugees and asylum seekers in line with the South African Constitution and international treaties (McKnight, 2008). It clearly stipulated the conditions under which applicants may or may not be granted refugee status. It also for the first time acknowledges the rights of refugees and asylum seekers as accorded in the Bill of Rights of the Constitution. After

refugee status is granted, refugees in South Africa have the right to apply for permanent residence after living for five years; they are also entitled for a South African refugee ID and travel document; they are allowed to seek employment and have access to basic services such as health and primary education just like South African citizens (Minnaar, 2000; Groot, 2004; Albertyn, 2008; Haigh and Solomon, 2008; McKnight, 2008).

Refugees are also entitled to disability grants and social assistance under the Refugee Relief Fund. Despite these legal provisions, few departments or public service providers have adequate policies and practices relating to the inclusion of refugees, asylum seekers and migrants (Groot, 2004; Landau, 2004; CoRMSA, 2008). Everatt (2010) and Amisi et al (2010) note that refugees get discriminated against and exploited. Refugees are challenged daily in terms of proper ID documents, respect for their basic human rights such as right to work, right to be protected, rights to education and right of access to health care. They also struggle to integrate into host communities. Similarly, Apalata et al (2007) stated that asylum seekers and refugees face prejudice in accessing public services. There is anecdotal evidence that public services such as health care are not responsive to refugees' perceived needs. Problem areas, according to Apalata et al (2007) include discrimination and xenophobic attitudes during service provision, language barriers, inappropriate treatments due to misunderstanding, exclusion from public hospital due to lack of permits, and increased perinatal and infant mortality among refugee children.

Neocosmos (2006) noted that South African society has experienced a massive problem of xenophobia since 1994. One of the notable, much publicised incidents was reported in 1999. Six white police officials were shown on national TV assaulting and abusing two illegal immigrants from Mozambique. They used police patrol dogs while committing this inhumane act. There was a widespread outcry from various human rights organisations and NGOs regarding this xenophobic incident (Masuku, 2006). South African Migration Project (SAMP) conducted a survey in 2001-2002 on the perception of South Africans towards foreigners and the result showed that South Africans indicated an extremely restrictive view towards immigration (Haigh and Solomon, 2008). South Africans, regardless of race, educational background, or income, seem to have shown feelings of intolerance towards foreigners, especially to black foreigners (Crush and Pendleton, 2004; Everatt, 2010). Crush and Williams (2002a) and Minnaar (2000) mention that the xenophobic violence in South

Africa has manifested as increased harassment: physical attacks, verbal abuse and calling of derogatory terms making foreigners unwelcome. Of the derogatory terms, *makwerekwere* is notable. Nyamnjoh (2006: 39) describes *makwerekwere* as:

[Not] only a black person who cannot demonstrate mastery of local South African language, but also who hails from a country assumed to be economically and culturally backward in relation to South Africa. Makwerekwere are usually believed to be the darkest of the dark skinned and to be less enlightened, even when more educated than the lighter skinned South African Blacks. Makwerekwere are also thought to come from distant locations in the remotest corners of the 'Heart of Darkness' north of the Limpopo, about which South African's in their modernity know little and are generally not interested to discover.

It is worthwhile to note from the above quote how degrading the term 'makwerekwere' is. It shows how dark skinned Africans who came to South Africa are negatively perceived. It is clear that they get despised and discriminated. Protests and marches against migrant traders have on a number of occasions ended in violent looting, mugging and vandalism of stalls and shops owned by those categorised as *makwerekwere* (Minnaar, 2000; Crush and Williams, 2002a; Nyamnjoh, 2006; Misago, Landau and Monson, 2009).

Most often, commentators link xenophobia to competition for employment and to social problems. This is one of the reasons that perpetuate xenophobia, but other factors also contribute to xenophobia. The following sections draw generously from the works of Harris (2002) in explaining xenophobia in South Africa. Literature suggests that there are three main propositions of why xenophobia is manifested in South Africa: the scapegoating hypothesis, isolation hypothesis and bio-cultural hypothesis. The scapegoating hypothesis is similar to Wimmer's rational choice theory and phenomenology theory (See Chapter 1). Biocultural hypothesis is related to Wimmer's functionalism and discourse theory (see chapter 1). Although the theories described in Chapter 1 are general explanations of why xenophobia happens, the hypotheses described below were developed within the South African context. In addition, media, political statements and public violence are used in explaining xenophobia in South Africa. The following section discusses the concept of scapegoating in the context of xenophobia in South Africa.

2.4 The Scapegoating hypothesis of xenophobia

This hypothesis is similar to Wimmer's (1997) phenomenology and rational choice theory as outlined in chapter 1. Rational choice theory relates xenophobia to competition between migrants and locals for jobs and other amenities. Phenomenology sees xenophobia as a result of the overall crisis of the whole society (Wimmer, 1997). Perceptions of relative personal and national economic situation have been shown to have a strong correlation with attitudes towards foreigners. When perceptions are negative, usually foreigners get blamed and become scapegoats (Crush and Pendleton, 2004). Since the advent of the new South African democratic government in 1994, there were many promises by politicians to ordinary South Africans of better life. However, the majority of South African people still live in poor conditions, and as a result, there have been a continuous number of protests against poor service delivery (Harris, 2002; Valji, 2003; Nieftagodien, 2008; Amisi et al, 2010). Valji (2003) states that "[the] rise of xenophobia has run concurrent with a rise in frustration over social service delivery". Similarly, Nieftagodien (2008: 68) argues that any attempt to understand xenophobia "should be located in the politics of failed development and delivery". South Africa has experienced a number of social unrest over various service delivery issues. Amisi et al (2010) note that there were 5813 protests recorded by SAPS in 2004/2005. Subsequent years show that averages of 8000 protests were recorded. This, according to Amisi et al (2010:32) "[is] probably the highest per capita rate of social protests in the world".

Harris (2002) relates the scapegoating hypothesis to competition for limited resources such as housing, education, health care and employment. Migrants have been viewed as a cheap source of labour by some employers and hence have been accused of stealing jobs from locals and worsening the already high unemployment rate (Maharaj, 2004; Zuberi and Sibanda, 2004). Tshitereke (1999) cited in Harris (2002) notes that discontent and indignation due to failure in service delivery in post apartheid South Africa created a favorable ground for xenophobia because people vented their frustrations of unmet needs towards foreigners. By the same tone, Maharaj and Moodley (2000) argue that the high expectation of the poverty stricken masses and the failure of the government to deliver services caused South Africans to be xenophobic. Morris (1998) states that there is a tendency to find groups of

foreigners who can be blamed for the ills in society and different groups at various times have been singled out as social scapegoats.

South Africans often correlate the country's social ills to the presence of foreigners and they justify their xenophobic sentiments by causally linking social problems to foreigners: taking away jobs from locals and therefore contributing to rise in unemployment; competing with locals for scarce resources such as housing; contributing to the breakdown in family structures, substance abuse and crime (Croucher, 1999; Minnaar, 2000; Adepoju, 2003; Valji, 2003; Landau, 2004; HSRC, 2008; McKnight, 2008; Everatt, 2010). In a similar vein, Tshitereke (1999:4) reflects on psychological theories of aggression and frustration and states that "there is a causal link between relative deprivation, xenophobia and collective violence. This link is forged through scapegoating the foreigner".

Scapegoating in South Africa is manifested in violence. The recent nationwide wave of xenophobic attacks of May 2008 is a good example. It started in Alexandra Township in Johannesburg and it spread all over the country. At least 62, among which 21 are South Africans, were killed and many more were injured and displaced all over the country. This was the worst violence since the end of apartheid. About one hundred refugee camp sites were established to house more than 30, 000 displaced people (McKnight, 2008; Everatt, 2010).

Everatt (2010) notes that the nationwide xenophobic violence occurred at a time when people were frustrated over the escalating interest rate, continuous electricity failures, increase in oil and food prices, unemployment hike, and poor service delivery. This was not the only incident that captured attention.

Solomon (2003) mentions that in October 1994, fighting erupted in Imizamo Yethu squatter camp in Hout Bay, Cape Town, between Xhosa fishermen and Ovambo migrants from Namibia. Croucher (1998) states that in December 1994 and again January 1995, armed youth gangs in Alexandra Township carried out attacks against people who were suspected to be migrants, destroying homes and property and marching suspected illegal migrants to a local police station demanding their immediate forceful removal.

Class Struggle Magazine (2008) mentions that in 1998, two Senegalese workers and a Mozambican were killed by being thrown from a train. It was found that these murders were perpetrated by the members of Unemployed Masses of South Africa (UMSA). While the UMSA stance is that foreigners are responsible for job losses, it did not condone this act at that time. In 2006, Somali refugees residing in Maspumelele Township and in 2007 those residing in Motherwell-Port Elizabeth were victims of similar xenophobic attacks (Hassim, Kupe and Worby, 2008; HSRC, 2008). In a similar incident, rioting arose in Zanspruit due to the alleged presence of illegal Zimbabwean residents and more than 100 shacks were burnt as a result (Haigh and Solomon, 2008).

These are only few examples of the documented incidents of xenophobic violence in South Africa. These records demonstrate that foreigners, especially black African immigrants living in the informal settlements and townships experience xenophobic violence. They show that most of the underlying causes of these attacks are due to factors such as competition for employment and resources like housing and economic trading relations. All of these impact the scapegoating of foreigners (Croucher, 1998; Hassim, Kupe and Worby, 2008; HSRC, 2008; McKnight, 2008; Everatt, 2010).

The scapegoating hypothesis does not clarify why the foreigner and not a member of another social group or individual, come to signify unemployment, poverty and deprivation. It doesn't explain why nationality is the determining feature of such scapegoating. The next section, the isolation hypothesis of xenophobia, considers this and situates foreignness at the heart of hostility towards foreigners.

2.5 The isolation hypothesis of xenophobia

According to Harris (2002:172), “[the] isolation hypothesis understands xenophobia as a consequence of South Africa's history of seclusion from the international community”. Morris (1998) argues that apartheid isolated South African citizens from countries beyond Southern Africa. In this hypothesis, foreigners represent the unknown to South Africans. With the political transition, however, South Africa's borders have opened up and the country has become integrated into the international community. This has brought South Africans into direct contact with the unknown; with foreigners. The interface between the previously

isolated South Africans and unknown foreigners creates hostility. According to this hypothesis, due to the creation of strict boundaries between South Africans as well as between the country and other nations during apartheid era, South Africans are unable to accommodate and to tolerate difference (Harris, 2002). Thus, based on the isolation hypothesis, South Africans are xenophobic not only due to the competition of foreigners for employment and resources, but due to the legacy of apartheid.

Neocosmos (2006) cited in Haigh and Solomon (2008:7) dismiss the isolation hypothesis argument and state that “the system of apartheid did not distinguish between black South Africans and foreign Africans; all were interpellated and oppressed as foreigners and so united against the system. It also doesn’t explain why racism is directed towards African foreigners, rather than, for example, European foreigners”. In this hypothesis, foreigners are regarded as homogenous category and there is no scope for differentiation between the many types of foreigners. There were African migrant labourers from the neighbouring countries who came to work in the mines during apartheid regime. They were exposed to South Africans; yet, people from the neighboring states like Mozambique and Zimbabwe still continue to be targeted by xenophobes. Xenophobia in South Africa doesn’t manifest equally across different nationalities and race groups. The following section discusses the bio-cultural hypothesis of xenophobia.

2.6 Bio-cultural hypothesis of xenophobia

Bio-cultural hypothesis is similar to Wimmer’s (1997) functionalism and discourse theory. As explained in chapter 1, functionalism attributes cultural difference as the main source of tension that leads to xenophobia. Similarly, discourse theory describes how labeling foreigners as ‘others’ leads to the marginalisation of minority groups and consequently, being victims of xenophobia (Wimmer, 1997). The theories described by Wimmer (1997) are general. The bio-cultural hypothesis, on the other hand, explains xenophobia from the South African perspective.

Immigrants may speak the same language and may be culturally similar to the host community. However, cultural and other differences may be present (Lucas and Young,

2003). The bio-cultural hypothesis discusses why foreigners become targets of xenophobic attacks by virtue of their physical features and their cultures, which are distinct, from that of the citizens. Some Africans are treated more harshly than other Africans and this is explained by this theory (Harris, 2002). Physical, biological factors and cultural differences exhibited by African foreigners in South Africa makes them vulnerable to attacks than other foreigners who have the same feature as that of South Africans. Peberdy (2001), Crush and Williams (2002b) and Valji (2003) note that African migrants are most often targeted by law enforcement officials and the general public. They are usually identified by physical features such as skin colour, vaccination marks, traditional marks as well as accent, language ability and the way they dress. Morris (1998) states that Nigerians and Congolese have physical features, bearing and clothing styles that differ from the locals. They usually do not speak one of the local languages. Therefore, they are easily identified and scapegoated. In the same vein, the HSRC (2008) argues that the principal factor determining perceived levels of hostility is the ability to blend into local community through cultural compatibility, closeness to one of South Africa's ethnic groups and the ability to speak a South African language. "Those who bear the brunt of xenophobia are those who dress, look and speak differently, notably Nigerians and other Western Africans and Somalis" (HSRC, 2008:8). Similarly, Harris (2002:174) states that "[the] bio-cultural features of hairstyles, accents, vaccination marks, dress and physical appearance can be read as indexical markers or signifiers. They signify difference and point out foreignness in a way that is immediately visible".

On the other hand, migrants from neighboring states such as Swaziland, Lesotho and Botswana are viewed more favorably, perhaps due to the long standing migration ties, language similarities and cultural resemblance (Crush, 2001). Valji (2003:5) explains why this method of identification led to number of people, including South Africans who look different from the majority, being arrested and detained in the process:

The use of discreditable and unreliable criteria to identify undocumented migrants has led to a large number of legally documented migrants as well as South African citizens being arrested and detained in the process-most for the crime of being too dark.....nearly 25 percent of those arrested by the police as illegal aliens are in fact South African citizens who either couldn't produce their identification documentations or had them torn up by officers who refused to believe their legitimacy.

It is very interesting to note from the above quote that South Africans who have features deemed to be similar to foreigners, are not immune from discrimination. The bio-cultural hypothesis shows the importance of identifying foreigners using certain criteria in carrying out xenophobic actions. However, it doesn't explain how only black foreigners and not other Asian and White foreigners who have different physical features, who have an accent, who speak different languages, and who have different styles of dressing are not targeted.

While the above hypotheses give a good insight as to why xenophobic actions are perpetrated, they do not fully explain xenophobic actions in all dimensions. Literature suggests that there are other factors such as media, political statements and public violence that perpetuate xenophobia in South Africa. The next sections will briefly address these factors.

2.7 The role of the media

Crush and Pendleton (2004) did a study on the perception of citizens towards migrants in six Southern African countries: Botswana, Namibia, Mozambique, South Africa, Swaziland and Zimbabwe. Across all the countries surveyed, it was found that the media is the main source of information regarding migrants. The main forms of media, according to this study, are television, radio and newspapers. The media plays an important role in informing the public. It has emerged as one of the most powerful institutions that is used as a tool in education as well as social transformation and development. Perceptions of the public can be influenced and even shaped by the media (Danso and McDonald, 2000; Harris, 2001; Landau, 2004; Haigh and Solomon, 2008).

The association of migration and migrants with crime tacitly encourages and condones xenophobic hostility and violence. Migrants are often associated in media coverage with crime, trafficking, drugs, disease and other social ills (ILO, IOM, OHCHR, 2001; Taran, 2002; Crush and Williams, 2002a; Mokegwu, 2005; Haigh and Solomon, 2008). The South African print media is no exception and represents foreigners in a negative and stereotypical manner. Certain nationalities, such as Nigerians and Mozambicans are stereotyped and portrayed as being drug dealers and car thieves respectively (Morris, 1998; Valji, 2003;

Mokegwu, 2005; Haigh and Solomon, 2008). This criminalisation of migrants from other parts of Africa is worsened by the use of terms like ‘alien’ and ‘illegal’ in the media, depicting all migrants negatively (Mokegwu, 2005; Harber, 2008). The word depicts foreigners as outsiders, different and strange and also portrays foreigners as threats (Harber, 2008). Danso and McDonald (2000: 1), under the auspices of the South African Migration Project (SAMP), conducted an extensive study analysing 1200 newspaper clippings between 1994 and 1998 and concluded that “coverage of international migration by the South African media has been mostly anti-immigrant and unanalytical”. The overwhelming majority of the newspaper articles, editorials and letters to the editor that were surveyed in the SAMP research were found to be negative about immigrants and immigration (Danso and McDonald, 2000). Croucher (1999) and Landau (2004) concur with the SAMP findings and state that reports by the media linking foreigners with drug syndicates, prostitution, human trafficking, crime, disease, and to a range of economic and social ills shape people’s perception and fuel xenophobic actions. In a similar tone, Adepoju (2006:36) states that the media aggravates public discontent among local population, creating division between immigrants and locals ‘clamouring for their expulsion’. Political statements often reported by press also aggravate xenophobic actions.

2.8 Political statements

Political statements attributing the country’s problems to foreigners often have negative consequences to migrants. It influences how the public perceives of migrants. Minnaar (2000: 12) states that “politicians have often made unsubstantiated and inflammatory statements that the ‘deluge’ of migrants is responsible for the current crime wave, rising unemployment and even the spread of infectious disease, that they overload the health and education system...”. These types of statements would obviously exacerbate tensions between locals and migrants. According to Peberdy (2001), some politicians refer migrants as illegal aliens, and illegal immigrants and this again paints a negative picture on foreigners.

Adepoju (2003:14) notes that South Africa has become increasingly xenophobic: “a growing number of South Africans now regard fellow African countries as a direct threat to their

future economic wellbeing and as responsible for the troubling rise in violent crime”. In a similar tone, Maharaj (2004) mentions that politicians in South Africa have expressed concern about the increased pressure that migrants will exert on health, welfare and other social services; safety and security; correctional service and justice.

Many famous political figures and government officials have made public statements that fan the flame of xenophobia Harris (2001:n.p) quotes Mangosutho Buthelezi’s address to parliament in 1998: “[if] we as South Africans are going to compete for scarce resources with millions of aliens who are pouring into South Africa, then we can bid goodbye to our Reconstruction and Development Programme”. Similarly, the then Defence Minister, Joe Modise, cited in Harris (2001:n.p) stated that: “[as] for crime, the army is helping the police get rid of crime and violence in the country. However, what can we do? We have one million illegal immigrants in our country who commit crimes and who are mistaken by some people for South African citizens. That is the real problem”.

The mayor of Johannesburg in 2004, Mr. Amos Masondo, in his state of the City 2004 address, also stated a widespread antiforeigner sentiment: “[while] migration contributes to the rich tapestry of the cosmopolitan city, it also places severe strain on employment levels, housing, and public services” (Landau, 2004: 6).

On a different note, denial of the xenophobic incidents and attributing them solely to criminal elements can also equally contribute to worsening the anti-foreigner sentiments by not confronting and providing solution. The former president of South Africa, Mr. Thabo Mbeki, in his remembrance tribute speech for the 2008 xenophobic victims said:

As many were killed or maimed during the dark days of May, thousands displaced, businesses and homes looted, and homes and businesses destroyed by arson, I heard it said insistently that my people have turned or have become xenophobic. The word xenophobia means a deep antipathy towards or hatred of foreigners. When I heard some accuse my people of xenophobia, of hatred of foreigners, I wondered what the accusers knew about my people, which I did not know. Over many years I have visited many parts of our country, both urban and rural, in all our provinces, and met many people from other countries, including African countries, who have not hesitated to announce their countries of origin....these masses are neither antipathetic

towards, nor do they hate foreigners. And this I must also say - none in our society has any right to encourage or incite xenophobia by trying to explain naked criminal activity by cloaking it in the garb of xenophobia. I know that there are some in our country who will charge that what I have said constitutes a denial of our reality.

Mbeki and most of his fellow colleagues absolutely denied that it was a xenophobic attack. As Everatt (2010: 3) notes: “[all] the evidence and research data indicate that Mbeki was indeed in denial about ‘his’ people...ordinary South African citizens, despite the heroic anti-apartheid struggle, but surely unsurprising in the context of segregation and apartheid-are deeply uneasy about ‘other’ Africans”.

This denial is understood, as Nieftagodien (2008:68) puts it, as “an attempt to deflect attention from the real underlying causes of the crisis”. These are only few examples of how political statements from public figures and politicians worsen antiforeigner sentiments. They create a favourable ground for xenophobic hostilities.

2.9 Public violence

Xenophobia, economic inequality and culture of violence are endemic in South Africa (Misago, Landau, and Monson, 2009). Harris (2002) describes a culture of violence as a situation when social relations and interactions are governed by using violence as means of legitimate solutions to problems. Before the demise of apartheid, that is, prior to 1994, the so called ‘people’s courts’ or ‘disciplinary committees’ served as political community justice. Executing people who were perceived to be political opponents through necklacing⁵ was one form of vigilantism (Misago, Landau and Monson, 2009). Due to the legacy of apartheid in South Africa, solving problems through violence, rather than non-violent means, is common. Public violence was the norm during the apartheid times and although it is illegal and criminally chargeable to incite riots and be violent, the culture of violence still remains deeply rooted in contemporary South Africa. Thus, although considered illegal, it becomes the norm for some people to use violence as a means of solving problems (Harris, 2002; Misago, Landau and Monson, 2009). In South Africa, xenophobia doesn’t only denote dislike or hatred towards foreigners, but is often accompanied by physical violence against those identified as foreigners (Minnaar, 2000; Valji, 2003; Masuku, 2006; Misago, Landau and

⁵ Necklacing is a form of torture and execution whereby a rubber tyre, filled with petrol is forced through the Victim’s chest and arms and set on fire. It was common in the townships during the anti-apartheid struggle.

Monson, 2009; SAHRC, 2010). Harris (2002:179) states: “[although] the form of violence may have altered across time, violence itself still persists as a dominant means of solving problems in South Africa”. It is in this context of a culture of violence that xenophobia in South Africa must be conceptualised.

2.9.1 South African justice system response to xenophobic violence

The Department of Justice and Constitutional Development (DoJCD) initially responded by arresting and detaining alleged perpetrators of the May 2008 xenophobic violence. 1627 people were originally arrested by SAPS. Initially, 469 cases were opened (CoRMSA, 2009). Subsequently, the number rose to 597 (SAHRC, 2010). The Ministry of Justice later announced that it would assign special courts with dedicated prosecutors and judicial officers to fast-track these cases through the criminal justice system (Mabandla, 2008; De Lange, 2008).

The DoJCD, SAPS and NPA entered into an agreement in pursuing justice for the victims of xenophobic violence. According to SAHRC (2010: 68), they committed themselves to the following actions: “SAPS to expedite investigations against those arrested; NPA to fast-track the prosecution process and monitor and guide any further investigation required; and the DOJCD to institute dedicated courts to deal with the matters required”. By October 2009, of the 597 cases, 159 have been finalised, with a verdict of 98 guilty and 61 not guilty. 218 cases were withdrawn (SAHRC, 2010). The convictions were mostly for theft and assault and the sentence was direct imprisonment with the option of fine. No convictions were made for rape or murder, despite the frequency of these types of crimes during the xenophobic attack. This was a concern for civil societies and other NGOs involved with refugee affairs (CoMRSAs, 2009).

2.10 Summary

Despite the tightening of immigration policy in South Africa, foreigners especially from African countries continue to be attracted to post apartheid South Africa. The economic opportunities and hope of better lives act as magnet to migrants. However, when they arrive, disgruntled citizens vent out their frustrations towards foreigners due to continued failure of the government to deliver basic services to citizens, especially those who are in the low income groups and foreigners become scapegoats. Most often, commentators link xenophobia

to competition for employment and to social problems. This is one of the reasons that perpetuate xenophobia, but other factors also contribute to it. Isolation Hypothesis and Bio-cultural Hypothesis also account for why there is xenophobia in South Africa. Negative perceptions and reports from media, political statements and public violence exacerbate xenophobic actions. None of the hypotheses discussed can stand on their own to explain the causes of xenophobia in South Africa and should be viewed together with other contributing elements to understand the causes of xenophobia in South Africa. The South African justice system responded to the xenophobic violence by arresting and detaining the alleged perpetrators. Although some convictions for theft and assault were made in the court, none were related to rape or murder. This is a concern as there were reports of many murders and rape incidents.

There is no literature that explores Ethiopian refugees' and asylum seekers' major problem related to accessing judicial service in South Africa; how such problems affect them; and the perceptions and opinions of Ethiopian asylum seekers and refugees on judicial service they receive. There is no study conducted on the perceptions and attitudes of personnel within the judicial system towards foreigners. With the above contexts in mind, there is a need to explore the perception of justice system personnel regarding the services they render and the experience of Ethiopian asylum seekers and refugees in interacting with the locals and accessing those services.

Chapter 3

METHODOLOGY

This chapter describes the methodology used in the case study of Ethiopian asylum seekers and refugees who reside around the greater Newcastle area. Personnel employed in the justice system were also participants of the study. It explains the choice of the case study, research methods, and challenges in the field work, analysis method, ethical considerations and limitations of the study.

3.1 Study setting

This study was conducted in the Amajuba district municipality, situated within the North Western corner of the KwaZulu Natal Province. The main town where the study was conducted is Newcastle. According to KwaZulu-Natal Business Portfolio (2011), Newcastle now has an estimated population of about 491, 102 and a municipal area of 6,909 sq kms. The region is linked to the commercial hub of the country, Johannesburg and the port cities of Richards Bay and Durban by road, rail and an airport with tarred runways. The region has an abundant water, reliable labour force, well developed infrastructure, world class educational, medical and community services as well as internationally acclaimed tourist attractions. The Central Business District of Newcastle has all of the country's major banks and financial institutions. Some notable manufacturing industries in Newcastle include: Arcelor Mittal Steel Works, Karbochem synthetic rubber plant, a granite tile factory, steel reinforcement company, slagment cement factory and Allwear, one of the country's largest producer of school wear, operate in the area. The economy in the district was historically focused on mining, but many collieries have closed. There is small scale mining of coal, clays or reworking of dumps (Ibid).

Newcastle was founded as a British military outpost in colonial Natal in the mid nineteenth century (Hart, 2002). The surrounding townships of Madadene and Osizweni came into existence when non-white landowners and tenants were forcefully removed between the 1960s and 1980s. In the early 1980s, the apartheid government allocated subsidies to South African and foreign industrialists to establish factories in the vicinity of the townships. Many Taiwanese factory owners moved to the South African countryside. By 1994, an estimated

1500 to 2000 Taiwanese immigrants had settled in Newcastle, and established over 60 factories, employing people from the surrounding townships. Like many other places around the world, Newcastle became a centre for global Taiwanese diaspora. About 70 percent of the industrialists in Newcastle produced knitwear (Hart, 2002).

The Taiwanese industrialists depended on the supply of cheap labour in the area. This however, was not sustainable as the trade unions opposed exploitative practices. In the mid 1990s, cheap goods from China began to appear in South African markets. Most of these goods were produced at a cost lower than the ones manufactured by the local Taiwanese factories. This forced some industries to close and others to scale down their workers. As Hart (2002: 159) notes, “there was a sharp decline in heavy industries, where employment—almost exclusively male—appeared to have fallen from around 9,500 in 1990 to approximately 6,800 in 1994. This shrinkage came about both through the closure of several firms, and the fundamental restructuring of those that remained in business”. Among the firms established since the mid 1980s, about 75% still remained in mid 1995 (Hart, 2002).

This study focused on the Ethiopian asylum seekers and refugees as well as the justice system personnel who reside in the region. There was no documentation of the exact number of Ethiopian refugees in the region. Therefore, I consulted with the Ethiopian community leaders in the area to get an approximate figure of the refugee population. It is estimated that about 1500 refugees and asylum seekers reside in the Amajuba district municipality area. Most of them are self employed traders. Their main livelihood is selling bedding and clothing to the inhabitants of the townships within the district. They go from house to house, marketing and selling their products. Some are street hawkers, while others own small business establishments like clothing and tuck shops.

3.2 Methods and data source

Strauss and Corbin (1990:17) define qualitative study as “any kind of research that produces findings not arrived at by means of statistical procedure or other means of quantification”. This study seeks to understand individuals’ experience from their own point of view. The research is qualitative in nature and hence is concerned with collecting descriptive data that can be used to “study human action from the perspective of the social actors themselves”

(Babbie and Mouton, 2006:270). The methodology adopted by this research therefore relies on the subjectivity of respondents' beliefs and acknowledges the similarities and differences between participants' views. Qualitative research uses a naturalistic approach that seeks to understand phenomena in context-specific settings (Hoepfl, 1997; Patton, 2002). The researcher tries to observe, describe and interpret situations as they are, maintaining empathic neutrality (Hoepfl, 1997; Welman, Kruger and Mitchell, 2005.). Unlike a quantitative study that focuses on the measurability, quantification and generalisability of findings, qualitative study looks at the lived experience of the subjects and seeks to illuminate and understand them (Hoepfl, 1997). Hence, it is fitting that the experiences of asylum seekers, refugees and the perception of justice system personnel be recorded and understood, by using qualitative research methodology.

This research took the form of a case study of justice system personnel and Ethiopian immigrants around the Newcastle area in South Africa. Gillham (2004) describes case study as a study that investigates a unit of human activity embedded in the real world, which can only be studied and understood in a context. The method is appropriate when investigators desire to cover contextual conditions and when multiple sources of evidence are required (Yin, 1993). The use of multiple sources of evidence is one of the key characteristics of the research (Yin, 1993; Gillham, 2004; Gerring, 2007). The case study "aims to understand the case in-depth in its natural setting, recognising its context and complexity, and aims to preserve and understand the wholeness and unity of the case" (Punch, 2005).

While a case study seems to suit this research, it is necessary to point out the limitations. Drawbacks according to Babbie and Mouton (2006:280) include "its limit of generalisability". In other words, the findings from the perceptions of the justice system personnel and Ethiopian immigrants in Newcastle may not be generalisable to other immigrants or other areas in the province. Besides, experience in accessing South African justice system from the general South African citizens' perspective as a parallel control group was not undertaken due to the limited scope of the coursework masters' study. However, as the focus of this study is specifically on the justice system personnel and Ethiopian immigrants, the potential drawback of the case study methodology is not considered to be of a great concern. On the contrary, this focused case study would be beneficial for other scholars who may wish to use it for future research.

Oppenheim (1992:121) states that the function of an interview schedule is to elicit particular information. It is conducted in a belief that respondents have certain information, ideas or attitudes on the subject of inquiry and get this information with the minimum distortion. With this purpose in mind, the study used in-depth interview as a data collection procedure. The interview schedule for migrants as well as the justice system personnel was mainly open ended (semi-structured) to elicit in-depth information and allow for probing. Each interview was digitally recorded for subsequent transcription and analysis. The justice system personnel were asked about the perception of the services they render to non-South Africans. Migrants were similarly asked about their interactions with the locals and their experiences in accessing justice system.

While the set of pre-determined question were provided by the researcher to all the respondents, the researcher noted the responses and probed further to open new avenues of inquiry, if they were related to the overarching research question, as they arose. For the Ethiopian immigrant respondents, their official language, Amharic was also used. This was to enable the participants to interact at ease and divulge as much information as possible. Interviews took place at different times. Most of the justice system personnel were interviewed during their lunch breaks at work. I am grateful that all were cooperative. With time constraints of one of the magistrates and two prosecutors, the researcher had to arrange a time and place outside work. This solved the time constraint problem with these categories of respondents.

With the migrants, most interviews took place in the evening after work. Some preferred weekends. Interviews took place in various contexts: in Ethiopian restaurants where lots of migrants hang out; in their shop; in the roadside where they were hawking and some in their places of residence. The context in which some of the interviews took place affected the clarity of the voice recording. For example, there was too much noise in the background when interviewing in the street. To counteract this, a field note was taken to accurately reflect the views that were not clearly audible. As for language, the researcher was able to communicate well with the respondents as he was fluent in both English and Amharic. So it was easy to translate it to English when Amharic was used. After translation and transcription, coding was used for organising themes.

3.3 Sampling

Purposive sampling is the dominant strategy in qualitative research (Hoepfl, 1997). Denscombe (1998) describes purposive sampling as non probability sampling method, where subjects are handpicked for research. There is a lack of accurate statistical data on refugees and asylum seekers. Thus, non-probability sampling method, specifically, purposive sampling is appropriate to intentionally select the subjects. Purposive sampling can be very useful for reaching targeted sample quickly and where sampling for proportionality is not the primary concern. With a purposive sample, it is likely to get the opinions of target population, but also likely to overweight subgroups in population that are more readily accessible.

The problem with purposive sampling, as Welman, Kruger and Mitchell (2005: 68) state, is that “different researchers may proceed in different ways to obtain such a sample. It is therefore impossible to evaluate the extent to which such samples are representative of the relevant population”. Snowballing is a sampling technique whereby an individual is identified and interviewed, and asked to name others in his or her social network that would in turn name others to be part of the study (Hughes and Sharrock, 2007). As Welman, Kruger and Mitchell (2005:68) mention, this continues “so that the sample, like a rolling snowball, grows in size till saturated”.

In this study, there were two categories of respondents: justice system personnel as well as Ethiopian immigrants. For migrants, they were generally targeted as those who have at some point in time accessed the South African justice system. The criteria used were the following: subjects should be either asylum seekers or refugees; reside in Newcastle area; made use of the South African justice system and are easily accessible [to be able to conduct the interview at least cost]. For the justice system personnel, the criteria used were employees who work in the justice system, and who work in the Newcastle area. Both purposive and snowballing were used in selecting migrant respondents. Based on the criteria given, a respondent was asked to recommend other participants from the Ethiopian community who would be willing to be interviewed. This allowed the participants to be at ease as they were recommended by a friend or acquaintance within their social network. The drawback to this method is the possibility that the person who recommends other person may share the same educational, social, cultural and economic background as the person recommending and thus may affect

the quality of the data. For the justice system personnel, purposive sampling was used. The researcher has been working with the Department of Justice as an interpreter and it was easier to approach the employees within the department.

Guest, Bunce and Johnson (2006) state that the sample size of non-probabilistic sampling depends on the notion of saturation. Saturation is a point where there is no new theme emerging from the data collected. Guest, Bunce and Johnson (2006) found that saturation usually occurs within the first 12 interviews. This is just a guide and not a rule. Therefore, the researcher will stop when interviews seem to provide no new information. With the above sampling method in mind, in total, the study utilised twenty in-depth interviews. The sampling frame for this study includes: 2 Magistrates, 2 prosecutors, 2 police officers, 2 Legal Aid attorneys as well as 12 Ethiopian immigrants in and around Newcastle area. More samples from the justice system personnel could have been drawn. However, due to the limited scope of the study being a coursework masters' thesis, 8 were chosen.

3.3.1 Negotiating access

Securing access to people, organisations and data is important for successful completion of any project, especially in researches involving case studies where the researcher may wish to spend a considerable amount of time with the study participants (Burton, 2000). The researcher has been working as an interpreter in Magistrates courts around KwaZulu Natal province and had built a strong rapport with the Ethiopian immigrant community and the justice system personnel in Newcastle area. Therefore, it was easy to access the immigrant community who utilised the justice system service. The researcher's role as an interpreter within the magistrates' courts facilitated access and trust needed for respondents to express freely. It also created an insider status that allowed cooperation both within the Ethiopian community and the justice system personnel.

3.3.2 Limitations of the study

This research was undertaken in the Newcastle jurisdiction among the Ethiopian asylum seekers and refugees and the justice system personnel. Hence, it is not representative of other Ethiopian refugees and asylum seekers in the country. Moreover, it does not represent the

views of refugees of other nationalities. The justice system personnel respondents are also taken from the Newcastle area and are not representative of the whole justice system in South Africa. Therefore, the findings may not be generalisable to other areas. The research, however, will still be valuable in providing a specific insight in revealing the questions the researcher seeks to answer, which may further be applicable to other immigrant communities.

3.3.3 Challenges

Setting up interviews with the respondents was a big challenge. Interviews had to be rescheduled a number of times, as the refugees were highly mobile. In addition, they work long hours, including weekends. Thus, the researcher had to build a strong rapport with the participants in order to convince them to partake in the interviews during their work hours and evenings. As the justice system personnel respondents, namely the prosecutors and magistrates also have busy schedules, securing a suitable time for interviews was difficult. This increased the time frame of the originally envisaged field work and delayed the research project.

3.4 Analysis

Bodgan and Biklen (1982:145) define qualitative data analysis as “working with data, organising it, breaking it into manageable units, synthesising it, searching for patterns, discovering what is important and what is to be learnt and deciding what you will tell others”. Theme identification is one of the main tasks in qualitative research (Welman, Kruger and Mitchell, 2005). Thematic analysis is a “form of pattern recognition within the data, where emerging themes become the categories for analysis” (Feredey and Muir-Cochrane, 2006: 82). It minimally organises and describes the data set in detail. A theme shows something relevant about the data in relation to the research question and represents “some level of patterned response or meaning within the data set” (Braun and Clark, 2006:82). Systematic coding and classification of gathered data is important for analysis. An important question to ask with regards to coding is: what counts as a pattern or how often does it need to appear to be considered as a theme? As Braun and Clark (2006: 82) note, “there is no hard and fast answer to the question of what proportion of the data set needs to display evidence of the theme for it to be considered a theme”. The researcher judgment is necessary to determine

what a theme is. Some flexibility is required and rigid rules do not work. It is vital that the theme identified capture something important in relation to the overall research question. Themes within data can be identified in one of two ways in thematic analysis: inductive approach or theoretical approach (also known as deductive). Inductive approach means that the themes are linked to the data themselves and may bear little relation to the specific questions that were asked of the participants. They are not driven by the researcher's theoretical interest in the topic. Inductive analysis, as Braun and Clark (2006: 83) put it, "is therefore a process of coding the data without trying to put it into preexisting coding frame or the researcher's analytic preconceptions". In contrast, theoretical thematic analysis is driven by researcher's theoretical or analytic interest in the area. It is coded for a specific research question (Braun and Clark, 2006).

An important concept for analysing themes revolves around the decision at which themes are going to be analysed. Braun and Clark (2006) state that themes can be identified at semantic or explicit level, or at a latent or interpretive level. At semantic level, themes are identified within the explicit meanings of the data and hence the analyst is not looking for anything beyond the mere description of what the participant has said or what has been written. On the other hand, thematic analysis at a latent level goes beyond the semantic content of the data and examines the underlying ideas, assumptions and conceptualisations that are theorised as informing the semantic content of the data. At latent level of thematic analysis, there is an attempt to theorise the significance of the patterns and their meanings and expressions through interpretation in relation to previous literature (Braun and Clark, 2006).

For this study, the themes were identified through theoretical or deductive approach. The interviews were digitally recorded and later transcribed verbatim. Transcribed data was printed and manually coded to identify repeated patterns of themes that are related to the research question. The themes were developed through grouping of words and phrases that appear to have similar concepts in relation to the research question. The themes were then subsequently analysed through interpretation using previous literature.

3.5 Ethical considerations

Social research raises ethical issues. This is so because social research is about people and involves collecting data from people. Although all social research to some extent intrudes into people's lives, qualitative research often intrudes more (Punch, 2005). A research that will create harm or distress shouldn't be conducted even if the outcome might be beneficial to a wider group (Williams, 2003). The in-depth, unstructured nature of qualitative research and the fact that the research raises issues that are not always anticipated means that ethical considerations are very important (Lewis, 2003).

Before this study was conducted, ethical clearance application was made during the proposal stage to the University of KwaZulu Natal Ethical Committee and it was approved. Strict confidentiality and anonymity was assured for the respondents for the entire duration of the study. Justice system personnel as well as asylum seekers and refugees in the Newcastle area participated freely and voluntarily. All of the respondents were informed of the nature of the research and gave their consent before undertaking interviews. A copy of the consent was given to each participant before the interview. Participant confidentiality was assured by using pseudonyms. Pseudonyms were used to hide participants' true identity. All the transcriptions are saved as password protected files in the researcher's computer.

3.6 Summary

This chapter presented the research methodology used to explore the perception of asylum seekers and refugees regarding the service they receive in the justice system. As the study seeks to understand the individual's experience from the individual's own point of view, the research is qualitative in nature and took the form of a case study of justice system personnel and Ethiopian immigrants around Newcastle area in South Africa. The method of sampling is purposive. The interview schedule for migrants as well as the justice system personnel was mainly semi-structured to elicit in-depth information and allow for probing. The study utilised twenty in-depth interviews: 2 Magistrates, 2 prosecutors, 2 police officers, 2 Legal Aid attorneys as well as 12 Ethiopian immigrants in and around Newcastle area. Each interview was digitally recorded for subsequent transcription and analysis. The findings may not be generalisable to other areas as the scope of this research is limited to justice system

personnel and Ethiopian immigrants in the Newcastle area. The themes were developed through grouping of words and phrases that appear to have similar concepts in relation to the research question. Confidentiality and anonymity was assured for the respondents as part of ethical consideration.

Chapter 4

PERCEPTION OF JUSTICE SYSTEM PERSONNEL ON FOREIGN MIGRANTS’ ACCESS TO JUSTICE SYSTEM AND EXPERIENCES OF ETHIOPIAN IMMIGRANTS IN ACCESSING THE JUSTICE SYSTEM

Any exploration of foreign immigrants’ interaction with the justice system has to begin with the assumption that they have in one way or other an encounter with the justice system, either as a plaintiffs, accused or defendants. Their encounter with the justice system has to be understood within the context of services the justice system has to provide under its constitutional mandate. Access to the justice system is, in this case, much like service provision, such as health and education, accorded to citizens and foreigners alike. In this chapter, I intend to explore and problematise two dimensions of the concern, which feed into one another. On one hand, we have the perceptions of justice system personnel about the foreign migrants and their access to and encounter with the justice system. On the other, there are the perceptions foreign migrants about the justice system and its personnel, and actual experiences of encounters with the individuals and departments in the justice system, have to be explored. One should note, perception about the system is likely to impact upon how one relates to the system, and in the same way, perception about the South African “other” is likely to reflect how the “other” is treated. Before I move much into these points, I start by briefly outlining the background of the participants. I then present and discuss the perception of justice system personnel and the experiences of Ethiopian immigrants in accessing justice system.

4.1 Profile of participants

A total of 20 respondents participated in this research. Of these, 12 were Ethiopian immigrants while 8 of them were employees of the justice system: two police officers, two prosecutors, two magistrates and two Legal Aid attorneys. Of the Ethiopian Immigrants, 10 were males, while 2 were females. Even though the researcher attempted to get more female participants to these categories of respondents, there were mostly male participant recommendations. This perhaps could be due to the low number female immigrants in the Ethiopian community. All of the participants are self employed, mostly independently

running their own business. For the justice system personnel, there was equal number of male and female respondents, 4 each. The age groups of the participants range from 25 to 52. Of the Ethiopian immigrants, nine of them have completed high school, while the others have only completed certain level of high school education. 5 of the Ethiopian Immigrants have asylum seeker permit, while the rest have refugee status permit. See appendix 1 for complete profile of research participants.

4.2 Perception of justice system personnel

The justice system is responsible in implementing the bill of rights enshrined in the Constitution of South Africa. The mandate of the justice system is for all the people living in South Africa and hence both locals and foreigners are afforded the opportunity for a fair and equitable state of law. Justice system personnel's account of the services they provide to non-South Africans was overwhelmingly positive. Except for two police officers who indicated that foreigners commit crime and do not deserve to enjoy what the law has to offer, all the other six justice system personnel that were interviewed said that foreigners are equal in the eyes of the law and do not get discriminated against. It is crucial here to recall the different segments of the justice system, and its provisions. The system is composed of different departments: courts, the police department and Legal Aid outside of the Justice Department. The personnel in each of these segments are likely to harbour different perceptions and sensibilities towards foreign migrants' access to the system as well as perception of foreign migrants. For the purpose of this study, I have focused on the following themes: familiarity with Refugee Laws, xenophobia, provision of language services, and provision of Legal Aid service, police dockets, relationship between the police and the community, the perceptions and actions of police officers and the different members of the justice system towards foreigners. The following sections are organised around these themes and reflect on these findings.

4.2.1 Perception on provision of Legal Aid service

According to the Legal Aid SA (2012), the aim of Legal Aid is to provide the right to legal representation at the expense of the state as set out in the Constitution of the Republic of South Africa. Legal Aid SA strives to realise all the rights accorded in the Constitution and to

ensure equality, justice, and quality of life for all. The following narratives about interviewees' account of Legal Aid are in line with the Constitution of South Africa and with the main objectives of Legal Aid SA.

Vanessa, one of the Legal Aid attorneys, who has worked in the system for 11 years, projects a positive outlook of the quality of the service provided to the foreign immigrants by Legal Aid. She underscored that service provided to and accessed by both locals and foreigners is equal. In her own words:

I think the service is good. Now that there is Legal Aid, they have the opportunity to be represented. Although they are not South African citizens, they get equal opportunity and treatment as that of South African...um....I would say it is good. I am satisfied that every body is getting equal opportunity. They are not being prejudiced by not being able to get a legal representative. I am satisfied that everybody is able to get Legal Aid regardless of citizenship or legal status in the country.(Vanessa, female, Legal Aid attorney)

Sarah, a magistrate from Newcastle Magistrates' Court, also concurs with the above claim that both locals and foreigners are accorded equal access to the justice system, making particular mention of the free services of an attorney provided by the state through Legal Aid. She states:

I believe we render one of the best judicial services in the world....umm...every foreigner, when it comes to the courts, gets the same treatment as a South African. If they cannot afford to employ their own lawyer, the state provides them with an attorney free of charge. So I think the services that are provided by the justice system are good. (Sarah, female, magistrate)

Simon, who has an experience of 25 years as a public prosecutor, shares the same attitude as that of Vanessa and Sarah and asserts that the Legal Aid service provided is equally available for every one.

The service is very good. It is not always accessible because of the cost involved, but we have a Legal Aid system which ensures that everybody who needs to be represented can be represented by a qualified lawyer. If they can't afford to pay it for

themselves, then the state refers them to the Legal Aid. They are not part of the prosecuting system. They act as private lawyers, although they work for the Legal Aid board. They then defend the person and makes sure that he has a defence by a qualified person. And that is not only to South African citizens. That is available for anybody in the country. If someone gets arrested in South Africa and go to any court within SA, then that person has the right to be represented free of charge by the Legal Aid Board. Whether it is lower court, higher court, the person is entitled for legal representation. (Simon, male, prosecutor)

Simon added that Legal Aid even goes as far as instructing private legal practitioners at the expense of Legal Aid Board to represent individual Legal Aid clients when Legal Aid attorneys are not available. Simon explains:

Legal Aid also has a system where if there is nobody from the Legal Aid Board, they still assist that particular person through what we call Judicare. They get a private attorney paid by the Legal Aid board. We have a lot of those cases. So yeah, it is a very fair system. Sometimes, it might be slow, but that would be just because it could be to allow for proper legal representation. We do have special courts for matters in the holiday periods, but serious matters that need proper investigations take longer, but in general, it is a very fair and adequate system. (Simon, male, prosecutor)

In my encounter as an interpreter in the justice system, most refugees lack the financial resources to hire private attorneys and depend on Legal Aid for legal representation. All the refugees and asylum seekers interviewed actually used this service. It is however important to note that some justice system personnel are not familiar with the different categories of refugee permits and this results in unnecessary delays in court proceedings. This view will be reflected later under familiarity with refugee law (see section 4.3.4).

4.2.2 Perception on provision of language services

The South African Constitution recognizes linguistic diversity and promotes respect for language rights. Eleven South African languages are recognised as official languages. As

South African courts use English and Afrikaans in their proceedings, the use of language service for other official languages is vital. Hence, interpreters are provided for all the official languages. Foreigners are also accorded the right to have interpreters in the language they are conversant in. The Department of Justice arranges foreign language interpreters as well. Thabo, Miriam and Calvin voiced their experiences regarding language services as follows:

The service is fine. It accommodates everyone. It treats every one equally with respect and dignity. All of them have rights like anyone. If the foreign national or local citizen doesn't understand English, we do our utmost best to arrange an interpreter who is conversant with the language. I think we have done a great job in that matter. (Thabo, male, prosecutor)

I think they are given the same opportunity especially with the court services. The only problem that we have.....um...especially as someone who acts as representative for accused foreign clients is language problem. If they are facing serious crime, we need to understand them properly in order to fully prepare for trial. The state provides foreign language interpreters. (Miriam, female, Legal Aid attorney)

We have excellent judicial service. Our judicial system is built around the notions of fair trial and the Audi Alteram principle....mmm....these principles apply irrespective of person's nationality. Foreigners are entitled to be tried in the language of their choice and when necessary foreign language interpreters are sought to provide a 'voice' to an individual who does not understand any local language. (Calvin, male magistrate)

The above three justice system personnel all agree that every one is given an opportunity to speak in the language of his/her choice in court. Vanessa, shares the same view, but adds that it takes some time to arrange interpreters and so delays court proceeding. She states:

There are people who come and provide language services. The problem is that because they are not available immediately and had to be requested, it takes time to arrange. So there is a problem of availability of interpreters. Sometimes it could be a

week or even more. So the case has to be postponed and this will be a disadvantage to our client. (Vanessa, female, Legal Aid attorney)

The above responses from Legal Aid attorneys, prosecutors and magistrates shed light on the services provided by the South African justice system from the perspective of justice system personnel. All the interviewees' reiterated the excellence of the judicial service rendered to all people living in South Africa, including foreigners. They indicate that Legal Aid and language services are available for South Africans and foreigners as well to make the justice system accessible to all. Police officers, on the other hand, have different perceptions from the ones outlined above and stated a negative sentiment towards foreigners. The following section considers the perspectives of police officers.

4.2.3 Perception of police officers towards foreigners

Police officers are usually the first point of contact when accessing the justice system. The Constitution of the Republic South Africa stipulates that the South African Police has the responsibility to prevent, combat and investigate crime. It also states that it is the responsibility of South African Police Service (SAPS) to uphold and enforce the law and ensure criminals are brought to justice. If a crime is committed, they have the duty to properly document and take the victim's statement, which is subsequently used to open a case in a court of law. The docket from the police contains a charge sheet that officially alleges the accused in court. Police officers therefore have a very important role to play in the justice system.

Both Police officers that were interviewed indicated a rather negative attitude towards foreigners. Jabulani and Fikile state as follows:

You know what? The root of all the problems we face comes from foreigners....um, they do crime, waste our resources, steal our jobs, women and all. You see my friend, don't get me wrong as some one anti-foreigner (sic)...I like it when we have other people in this country, but most of these foreigners come and do stuff we are not used to. Now the law gives them lots of freedom. That is why they abuse it. Yes, we give them a lot of good things, but they should be thankful because some of them, where

they come from, don't even have police to protect them. (Jabulani, male, police officer)

Foreigners have a privilege of getting the same service as that of South Africans. When it comes to the police, we have to protect citizens and non citizens equally.... um... I believe SAPS provide good service to all the people who reside in the country. However, I believe most of the crime is committed by foreigners, and they are the ones who strain our resources. (Fikile, female, police officer)

Jabulani and Fikile perceive foreigners as those responsible for various social ills in the country: crime, unemployment, competition for government resources and legal privileges. They attribute the country's problems to foreigners. Police officials are required to sign a code of conduct upon employment and they commit to uphold the fundamental right of every person as laid out in the Constitution. Any kind of prejudice or unfair discrimination against foreigners therefore violates the Constitution. The claims made by both police officers reflect antforeigner sentiment. When perceptions are negative, usually foreigners get blamed and become scapegoats (Crush and Pendleton, 2004). This corresponds with Wimmer's (1997) rational choice theory and discourse theory discussed in chapter 1. Rational choice theory ascribes xenophobia and racism due to competition between migrants and locals for jobs and other amenities such as housing. Discourse theory explains how labeling foreigners as 'others' results in the marginalisation of migrants by the dominant native groups. Harris (2002) states in her scapegoating hypothesis that competition between locals and migrants for limited resources such as housing, education, health care and employment may result in tensions that could end up in xenophobia. The views expressed by the two police officers may make migrants exposed to abuse and discrimination by the very same law enforcement people who were supposed to protect them.

4.2.4 Perception on familiarity with Refugee Laws

Most refugee laws in Africa are based on the 1951 United Nations Convention related to the status of refugees and the 1969 Organisation of African Unity (OAU) Refugee Convention governing refugee affairs in Africa (McKnight, 2008). In South Africa, the Refugee Act of 1998 binds the state to certain obligation with respect to the treatment and protection of

refugees in accordance with internationally accepted guidelines (Republic of South Africa, 1998). According to Refugee Act 130 of 1998, a refugee is entitled to full legal protection, formal written recognition of refugee status, seek employment or study and get same basic health services and primary education as South African citizens.

All of the justice system personnel were asked about their knowledge on Refugee laws. Amazingly, except for one magistrate (Calvin), none of them is familiar with the provisions of the Refugee Act 130 of 1998. Here are some their responses:

Mmm...I interact daily with foreign clients, but I must admit that I am not familiar with the Refugee law.....I think that is a weakness from our side...err...as legal practitioners, we have to be knowledgeable. (Miriam, female, Legal Aid attorney)

I don't know what rights refugees have...err...I know it is not an excuse, but I will consult when I need to deal with it. (Thabo, male, prosecutor)

I have some idea of what legal privileges are accorded to refugees...mmm... however; this is not a direct knowledge about the Refugee Law. I make use of the Constitutional Law and it provides protection for all the people who live in South Africa. (Sarah, female, magistrate)

I understand...uyazi (sic)... that I have to check refugee permit when I meet with them. I only know that refugees need to have a proper documentation. Other rights and what the Refugee law says, I don't know. I arrest if they don't have permit. (Jabulani, male police officer)

I have worked for many years with the justice system as a prosecutor and as a magistrate. I understand the Refugee Act and the different provisions. I know what rights they are accorded and I have used the Refugee Act along with the Bill of Rights and the Constitution. (Calvin, male, magistrate)

Justice system personnel interact daily with refugees and asylum seekers. Lack of knowledge or familiarity with the Refugee law may be an obstacle in day-to-day running of courts. When cases involving refugees appear in court, how would police officers, prosecutors, Legal Aid

attorneys and magistrates deal with it if they don't have acceptable working knowledge of refugee laws? If they are not familiar with the law, then it would mean unnecessary delay in court proceedings. They could then be obliged to do their own research for information regarding refugee laws to enable them to continue with the matter and this consumes court time. From my experience as a court interpreter, some of the prosecutors and Legal Aid attorneys I interacted with had to postpone cases for a number of times due to lack of knowledge of Refugee law. It is therefore very important that some kind of training be provided to justice system personnel to help them understand the Refugee Act.

4.2.5 Perception on xenophobia

The question of nationality and citizenship and the notion of belongingness and exclusion has become an important feature in the era of globalisation. There has been unprecedented free movement of capital and goods while a growing trend in restricted labor mobility. Despite strict immigration laws in many countries, people still migrate in numbers and this has resulted in tensions between locals and foreigners (Nyamnjoh, 2006). In the South African context, the demise of apartheid and the birth of democratic South Africa heralded a rearrangement of boundaries of inclusion and exclusion in the South African society. Excluding individuals on the basis of which nationality they originate from has become widespread in society and this has resulted in tension between South Africans and immigrants (SAHRC, 2010). The exclusion of black immigrants, especially from Africa has been openly expressed in violent actions by South Africans. This was evident during the nationwide violence against African foreigners in May 2008 and has been described as the worst xenophobic behavior (CoRMSA, 2009). In the light of the nationwide xenophobic incidents that occurred in 2008, justice system personnel were asked about their perception on xenophobic violence and how they dealt with xenophobic matters in bringing the perpetrators to justice. The following extracts reflect on their responses:

I think that the government needs to step in and provide more programs to create more tolerance among people and stop excluding non-nationals. If they are here legally, they should be welcomed like any other nationals-I mean they don't treat the British and the Americans like that. Why certain countries find favour in the eyes of immigration whereas others face discrimination? They need to be more tolerant- all

the way down to the grass root levels need to cultivate positive thinking. Human dignity and human rights of people need to be respected. (Miriam, female, Legal Aid attorney)

Miriam's view shows that there exists a difference in treatment between different immigrants. British and American immigrants seem more favorable than other immigrants and face less discrimination. She suggests tolerance and recommends that government intervenes in promoting and respecting human rights and dignity. Similarly, Sarah agrees that government needs to take action. In her own words:

My personal opinion is that it is a simmering threat and if the government is not seen to try to control the influx of people, especially people from Africa into our country, the people will become more and more restless and we will see more incidences of xenophobia under what ever guise they come up with. I don't think xenophobia happens because they come from outside only. It can be due to the behaviour of the people... err.... for example, if the public perceive that street robberies especially on women are committed by foreigner, they will act against them. I think most foreigners come and involve in crime. (Sarah, female, magistrate)

Sarah acknowledges xenophobia as a real problem and recommends that action needs to be taken by government to tackle it. She seems to have negative perception of foreigners. First, she associates the problem of xenophobia to the large number of African people coming to the country and the solution she suggested was influx control. She did not consider other immigrants from Asia, Europe, or Americas. Secondly, she generalises that foreigners commit crime attributing it to their behaviour. Magistrates have the role of an umpire in insuring a fair trial. They are supposed to be independent and neutral. This kind of negative attitude towards foreigners, especially emanating from magistrates, may amount to prejudice. It may negatively influence the outcome of the judicial procedure.

Thabo explains xenophobia from prosecutor's perspective as follows:

You see, from a prosecution point of view, public violence, such as assault, arson etc, the people who are being charged deny that it is foreign related violence. The victims

are usually called by different derogatory words such as amakwerekwere⁶. That means an imposter. The locals accuse of them they are taking their jobs, their women and all that. Mmm....sometimes you get xenophobic attacks placed under the guise of clearing the criminals, but they resent them for being here, for willing to work with lower wages, for allegedly living with out proper documentation etc. They said they were not meant to be allowed to work and all. There is no offence called xenophobia, but includes all the criminal elements such as assault, arson, murder, looting of property etc. that are charged separately. So there are always multiple offences. The main reason behind that particular uprising is what they call xenophobia. (Thabo, male, prosecutor)

Thabo's account of why locals attack foreigners show competition for jobs as one of the reasons why they incite this violence. Another reason put forward was the notion that they are stealing their women and also the claim that foreigners are the ones who are committing crimes. In fact, Thabo associates the word amakwerekwere with crime-an imposter. This explanation somehow supports Harris's (2002) scapegoating hypothesis. She states in her hypothesis that xenophobic violence against immigrants is due to competition for limited resources such as housing, education, health care and employment (see chapter 2 for details). To some extent, these are perceived rather than real threats. When locals are frustrated over failure of service delivery, they vent out their frustrations on foreigners, claiming that they are jobless because of them. A number of studies have also indicated similar findings (see reference below and chapter 2 for details).The findings assert that locals relate the country's social ills to the presence of foreigners and justify their xenophobic sentiments by causally linking social problems to foreigners: taking away jobs from them and therefore contributing to rise in unemployment; competing with locals for scarce resources such as housing; contributing to the breakdown in family structures, substance abuse and crime (Croucher, 1999; Minnaar, 2000; Adepoju, 2003; Valji, 2003; Landau, 2004; HSRC, 2008; McKnight, 2008; Everatt, 2010; SAHRC, 2010).

Vanessa, a Legal Aid attorney disagrees with the notion that foreigners are stealing jobs from locals. She explains her view on xenophobia as follows:

⁶ Derogatory term for African foreigners in SA. See chapter 2 for detailed explanation of the terminology.

I think it is not right. It is a shame what happened especially in 2008. Locals take advantage of foreign nationals. It is a poison that needs to end. The minds of our people need to change and we need to embrace outsiders. We are all Africans- I mean there was a time when our leaders during apartheid had to go in exile. They were refugees in many countries to be able to fight for our freedom from abroad. Most of them lived in African countries-like Tanzania, Zambia, Mozambique, Namibia, Angola etc and they were supported by our African brothers. They were never treated like that. In fact, they received best support. Now that we have this freedom and peace, now it is about time to return this favour-we should support other people who come to seek refugee. We should not discriminate and harass them. Our counterparts are still struggling with poverty, political violence and many other problems-so we should feel that it is about time we return the favour. So it is not justified at all to say that people come here to take jobs. I tend to disagree. Very few foreigners are in the civil services. Most are opening their own businesses. Why is it difficult for South Africans to do the same? Why can't they open their own businesses and compete with them, instead of accusing them of stealing jobs. I think people are lazy and they are trying to blame foreigners to cover their laziness-saying that they are coming here to take their job opportunities. We have seen lots of guys, especially Ethiopian guys walking long distances on foot selling bedding stuff-you will never see South African doing that. And when they make money like that, then people complain and say that they are stealing our jobs. No one is stopping locals from doing likewise. (Vanessa, female, Legal Aid attorney)

Vanessa projects a positive attitude towards African foreigners. She acknowledged the role African countries played during apartheid in hosting South Africans who were in exile and feels South Africans need to show reciprocity of favour towards refugees. Her reasoning that foreigners create their employment corresponds with the profile of Ethiopian immigrants. As can be seen from appendix 1, none of the Ethiopian immigrants are employed by the state or other local businesses. They all listed their occupation as self employed or hawking and they all run their own business.

A democratic society abides by the law of the country. The ability of the South African government to identify and bring perpetrators to justice is therefore an important aspect of a democratic country. However, it is a challenge to appropriately identify people charged with

xenophobic violence. Calvin and Simon respectively explain the challenges courts face in prosecuting people charged with xenophobic violence as follows:

Lack of evidence is one of the challenges. For example, most of the xenophobic attacks took place at night. So it is really very difficult to identify who the perpetrators are. The police go to the scene and there are a whole lot of them running around, with no piece of evidence. So...err... you cannot point any individuals out and the police were not there when that particular person was attacked or when their house was burnt down. So they wouldn't specifically point out who is responsible. That is why you have a situation where we have difficulty from the prosecution point of view. Mostly, the offences committed are malicious damage to property and arson and /or theft as well-they steal people's possession as well...err....assault, attempted murder....and of course public violence. Public violence is a common charge that is put against these people-because two or three people start marauding and assaulting people falls under the category offence of public violence. (Calvin, male, magistrate)

I think the main challenge in prosecuting xenophobia related offences is identification. Who did what? And if it was said that so and so house was burned, so and so property was stolen, so and so was chopped with a bush knife. You are sitting with eight people charged. You can't prosecute all of them unless you know what each of them did specifically. You can say that they acted with a common purpose to act that offence, but you can't attribute the different types of offences specifically to each individual offender. So, that is what I said-we need proper identification- who did what? So that is why we use common purpose to charge them. (Simon, male, prosecutor)

As the extracts from Calvin and Simon suggest, lack of evidence may result in a condition where people charged with xenophobic violence may not be appropriately persecuted. In order to convict someone, the state must prove that the accused person committed the offence beyond reasonable doubt. Proving this requires sufficient evidence. Hence, being unable to properly identify suspected individuals may result in withdrawal of charges. Perhaps this could be one of the reasons why of the 597 xenophobia related cases that appeared nationwide in different courts, 208 cases were withdrawn (See chapter 2, section 2.9.1 for these statistics).

Similarly, Jabulani and Thabo explain why it is difficult to follow up witnesses in xenophobic incidents.

Most of the people who lay the charges are from the informal settlements. Those people are migrants. They move around a lot. They may be here today, but next time, they are somewhere else. Then the neighbours don't know where they have gone, we can't trace them and specifically in bigger cities for example, lots of people from different provinces come for work opportunities. But they sort of migrate between their original place and the informal settlement on a regular basis. So it is difficult to get hold of them. They would go to the farm, which is their ancestral home. So they go there and stay there for six months. So you don't know where they are. You know a lot of rural areas, have no proper addresses. So they say, they live next to a school or somewhere next to a trading store, things like that. So not easy to trace where they are. And the police have to subpoena the witnesses. They would go to some unknown area. So they find it hard to locate. So that is the problem-the availability of the witnesses that are required to give evidence when they are needed is a challenge. It is not that they disappear, they come back later, but we don't know the time. So at the time when we issue subpoena to the witness, they may not be available. (Jabulani, male, police officer)

In many of the instances, these people don't have much money. They stay in squatter camps –so they may not have money to pay to taxis to come to court and they can't walk as it is too far to do so. So they just stay away. They get witness fess that they can claim after their arrival in court, but where would they get money to get to court? This is a big challenge. (Thabo, male, prosecutor)

As Jabulani points out, providing correct residential address when opening a case is very important. When courts want to summon a witness, they have to serve a subpoena. The investigating officers need to have accurate addresses of witnesses to consult with them and also issue them with a notice to appear in court. Most of the witnesses do not provide exact residential addresses and hence tracing them becomes problematic. Another challenge put forward by Thabo is lack of transport money for witnesses. The state provides refund for transport money for witnesses, but they will only get it after attending the court session. Although witness fees are made available, some of them can't even afford the taxi fare to go

to court and may simply decide not to attend the trial in court. The court may conclude that complainants are not interested in pursuing the matter and cases may end up withdrawn.

In the same vein, Simon contends that cases may be withdrawn because of witnesses not availing themselves of the justice system's services for fear of losing their lives. He states:

When people are sometimes victims of crime, they lay charges, but afterwards, they get scared you know. They are scared they will be attacked again; err...so they don't come to court afterwards. Well, we have programs to protect witnesses. It is functioning, but you can't place every body that lays a charge and scared of that person to be under the witness protection program. If we do that, then 90% of the complainants would be in that program. You see people have funny attitude. You find that, it crosses over all the races. Someone is robbed at gun point at his house. He doesn't want to go to court because say for example there were five when they committed this offence and may be only three are arrested. So he fears that the other two are going to come and kill them. It is a general fear. You find shop owners, whose shops have been robbed more than once, they say, no no...it is the same people who robbed us. So they get scared to pursue the matter. So it is not easy to have witness protection for everyone. It is also voluntary- you can't force any body unless they are willing to. So, lots of people don't want to go through the program. It is only those who fear for themselves and for their family lives that usually go to the program. It is very costly exercise, because people have to be taken to safe houses and all that...mmm...err...they are not allowed to communicate with the family members and things like that. They are not allowed to disclose where they are. So it is hard. I can imagine it could be a lonely life. You are taking them out of their comfort zone. (Simon, male, prosecutor)

As Simon demonstrates, although the law provides a witness protection plan, some complainants do not make use of it and end up not pursuing the charge they laid to their perpetrators. He argues that perpetrators may use their accomplices to hunt down witnesses. This instills fear among complainants and this perhaps could also be one of the reasons why lots of cases get withdrawn.

4.2.6 Perception on police dockets

Case dockets are opened by the South African Police Service after a crime is reported and it is recorded in the Criminal Administration System (CAS). It is the duty of the police to investigate the crime and make sure that suspects are apprehended and brought to court for prosecution. Hence, police dockets are very important documents. Dockets contain the official charge sheet and all the statements and evidences relating to a court case. Without a docket, it is not possible for the state to continue with court proceedings. Therefore, handling them properly is vital. When judicial personnel were asked their opinions regarding handling of dockets, their responses were as follows:

Sometimes, we have a problem where cases dockets get lost or stolen...err...it happens in various ways. Police, because of the multiple tasks they have and multiple dockets they are carrying, they can easily lose it. For example, the police may carry four dockets, maybe to take statements in one area. He/she may go with unmarked vehicle and the police may park the car and dockets inside the car and the car gets stolen. It doesn't happen all the time, but it does happen. From some officers who are not careful enough, people come and steal them. That is why when they bring it to court; we have a special place to keep the dockets. There is also a case where some corrupt officials involve in bribery to make dockets missing. (Simon, male, prosecutor)

Yes, frequently we lose dockets. Under such circumstances, the cases had to be withdrawn. There is no way you can proceed without a docket. The witness won't even know what they are expected to come and say. They won't even arrive to court because in order to subpoena you need a docket. And most dockets that disappear are not subsequently found, so you find that is the end of the matter. I think the reason is negligence and something we cannot overrule is corruption from police officers. I suspect they could be bribed to do this. (Thabo, male, prosecutor)

Both Simon and Thabo underscore the importance of dockets. They acknowledge that they encountered a scenario where dockets get lost. Losing dockets before or after they appear in court is a serious obstruction of justice. The courts cannot proceed if dockets are missing. Simon reasoned that police have a demanding job with many assignments on their plate and

may sometimes lose dockets. This however cannot be an excuse in losing such an important aspect of the judicial process. They should handle it with utmost care for correct administration of justice. Another worrying explanation on why some dockets get lost is corruption. This again constitutes an impediment to investigation of cases and consequently contributes to inefficiency in the functioning of the justice system. To combat loss of dockets, measures are now put in place. Thabo explains:

Now, they also have a provision where every docket that comes in here also get scanned as a back up before it goes to the court. So we have a record, that is the content of the record (sic). The disadvantage of it is that you get copies of documents and if you happen to do things like hand writing analysis, experts cannot do it as it is a copy. They need originals in order to see the nuances and the little evidences. Our law of evidence also states that if a document is submitted as evidence, it must be original. If it is not, there must be a reasonable explanation why it is not easily available. But the advantage is that, it happened many times here, is that we were able to proceed prosecution because of the fact that the docket is scanned. And every docket that is scanned has a reference number printed on the docket, so it is easy to trace it in a computer. (Thabo, male, prosecutor)

Simon also made a similar statement on securing dockets from being lost:

Normally, now in order to curb loss of dockets, what they do is the process what they call scanning of the docket. Whenever they get a docket and the investigation is complete, they scan the docket-so when the original is lost, they can replace it with the scanned one. They started this procedure not so long ago-I think some time in 2008. (Simon, male, prosecutor)

Simon stated that the procedure of scanning of dockets started in 2008. Even if dockets go missing, the court can trace the contents of the original from the scanned copy and proceed with prosecution. This is indeed an achievement, as potential corruption can be reduced. However, there is a downside to using scanned copies. As Thabo stated, the courts cannot make use of certain analysis techniques such as handwriting analysis. The handwriting experts need originals in order to pinpoint the details of the script. Using scanned copies may not help for this purpose.

4.2.7 Perception on the relationship between police and community

Many communities have a partnership with the police to proactively deal with crime prevention and protection. This is usually made possible with a structure called Community Policing Forum (CPF). This forum encompasses a group of people from different communities and police representatives who meet regularly to discuss safety problems in their communities. CPF's aim is to effectively prevent crime and also ensure that police are accountable and transparent to the community they serve. Fikile demonstrates the fragile relationship of CPF and the police:

There are CPF as well as community protections that are not related to the police. So one often finds that the one may not know what the other does. The minister of police and other authorities encourage the community to be involved in policing their community. Err...sometimes, it works well...err...but in some instances, police may not be readily available to assist in community forums as they get busy. Vigilantes, it is a no no....err....it is happening more and more. But it is not acceptable to take the law into your own hands. The communities must work hand in hand with the police, in order for matters to be sorted out. The so called street patrols that we have in many areas are not typically part of the police, or community forums, but they work with them. They have radios and take turns in patrolling. It is the community crime prevention effort, and whole streets-10 or 15 of them are prepared to assist and be part of it. So as soon as they see some thing suspicious in the street, they report to the police. Often, the relationship between a particular community and the police that protect them is not generally good. The police are either understaffed or they are too far away from their particular places. So according to some communities, the police do not respond quickly enough to the particular needs of the community. So they would probably form the vigilante group. They not only hand in suspect, but they kill too. I mean, just in the last month, we had many reports from all over the country. Community members attack people accused of rape, and robbery. Mobs are easy to form-all you need is a couple of individuals and if they start shouting, then more people follow and form vigilantes. So, it is a big problem. So if the police don't sort it out, it will happen more and more. Here, the people would say they are tired of crime. So if the police don't help, they

say they will sort it out themselves. It is our families that are in danger; it is our properties that are in danger. Who is helping us? We are reporting the matter to the police, nothing happens, they don't arrest. So they take it into their own hands. (Fikile, female, police officer)

Similarly, Simon states that vigilante groups were responsible in the 2008 xenophobic attacks. He claims that it was not easy to trace every one as it was undertaken collectively by groups of people. He explains:

The 2008 xenophobic attacks to foreigners was made by locals who collectively formed groups and targeted foreigners destroying and looting their property. As it was a group deed, it was not easy for us to point who did what and what to charge each individual. In such circumstances, evidence is important. In cases where there is vigilantism, it is hard to prosecute individually. (Simon, male, prosecutor)

Fikile's account paints a rather unhealthy relationship between the police and community. Although the law doesn't support vigilante groups, some communities seem to take the law into their own hands. Lack of confidence in the criminal justice system makes people to resort to mob justice. Harris (2002) and Everatt (2010) state that South Africa's apartheid legacy of institutionalised violence as a means of venting out frustrations and communicating grievances still persists in the present society. This historical culture of violence has resulted in increased vigilantism and continued impunity for perpetrators (See chapter 2, section 2.9 on public violence). Mob justice is however against the law, as it breaches human rights and disrespects human life. It manifests usually in the form of violence that leads to death. Hence, vigilantism, instead of containing crime, aggravates lawlessness. As Simon points out, persecuting individuals involved in vigilantism is also difficult, as it is not easy to point exactly who did what in the commission of the offence. The police will then have the double task of investigating the original crime that initiated the mob justice as well as the vigilante activity. This strains police resources.

4.3 Experiences of Ethiopian asylum seekers and refugees in accessing justice system services

The justice system is mandated by the Constitution of South Africa to protect all the people who reside in the country. Both locals and foreigners are equal in the eyes of the law. The previous sections presented findings and discussions from the perspectives of justice system personnel. In the same vein, it is important to now look at the experiences of those people who came to make use of the services provided by the justice system personnel. This section focuses on the perception of Ethiopian immigrants on the services they receive from the justice system personnel. This includes their experience in interacting with prosecutors, magistrates, Legal Aid attorneys, police, as well as immigration officers in Home Affairs, who work closely with justice system when dealing with immigrants. It also looks at the challenges Ethiopians face in their daily lives as immigrants.

4.3.1 Perception on the justice system service

Interviewees' account of their experience in accessing justice system is both positive and negative. Most of the interviewee's agreed that the system is fair and that there are good provisions within the justice system that accommodates every one. Some, however, expressed discontent and claimed that they faced discrimination. Chefamo, Rahel, Arkiso and Addis reported a positive attitude on the services of justice system:

From my experience, I mean, I have been in court to see cases....err...I think I trust the justice system. I never had a problem with it. From what I have seen, it is a very fair system, like for example, if you don't speak English, imagine the government provides interpreter at its own cost. They try to accommodate you. I think they have good service...yeah...I still appreciate that. (Chefamo, male, Internet café and shop owner)

Err, I think when it comes to the law, South African institutions, err. I think it is fair...err...the judiciary, err...the court, whether the person is South African or foreigner is the same. It doesn't really make a difference. Yeah, I think it is fair. Well, with the court system, it is the same. They provide the same service, you

get the same treatment. I think it is fair. Well, with the court system, if you can't speak English, they provide interpreters, same with the locals as well. (Rahel, female, co-owns a shop)

What I think? Err...mmm...I think the services they offer are good....when I compare it with the services that are offered at home, I think these are better....at home, we use the official language, no matter what....here at least they provide interpreters and I can easily express my case in my mother's tongue.(Arkiso, male, self employed)

The courts have a fair procedure and I think are good. They are very receptive and helpful. They provide interpreters for people who do not speak any of the local languages. From the judges, to the prosecutors and the court staff, they treat us well. What I understood from this is that the judicial services are fair and not biased to foreigners. They treat us just like the locals. (Addis, male, hawker)

Chefamo, Rahel, Arkiso and Addis all acknowledge that the justice system is fair and claimed it provides good service. Their view on the provision of foreign language interpreters also corresponds with the perception of justice system personnel discussed on section 4.3.2. Debebe and Abebe also acknowledge availability of foreign language service in courts. They however indicated that it is not present when they deal with the police. The following extracts reflect on this:

Err...generally; I can say that they have a good system. The justice system is of an international standard. I have been here for a while and I have not encountered any particular problem with it. Foreigners are not ill treated. The only problem is what happens at the police station. It worries us when foreigners are arrested and do not speak English properly. When the police take statement or do the charge sheet, they don't use interpreters. That becomes a problem when they bring it to court, because the accused or the complainant was not properly consulted in the first place. Sometimes, we find that for simple cases that wouldn't have needed court appearance, due to communication break down with the police, they end up coming to court. So improvement is required from the police side to use foreign language interpreters before charging and bringing foreigners to court. Other than that, when people come

to court, they are treated fairly like any body else and I haven't seen any prejudice. (Debebe, male, hawker)

With the courts, we get the same service as any other citizen. The only problem is the language barrier, where when we first interact; our statements get misunderstood as they only bring interpreters at a later stage when a court date is set. (Abebe, male, pastor)

As Debebe and Abebe pointed out, language service should also be provided at the initial stage when cases are opened at police stations. Courts rely on the original statement that was provided by the complainant when opening a case and it is a very crucial piece of evidence during trial. Any misinterpretation or misunderstanding may result in cases being withdrawn. It is therefore very important to provide a language service when opening a case.

Some of the interviewees indicated that they get discriminated by virtue of being foreigners. Some even expressed that they have experienced xenophobia in courts. Tesfaye, Mare and Beyene state their experience as follows:

Well, I have accompanied a friend to a court session before. So from my experience, sometimes the judges are xenophobic. There was this incident where the guy was accused of possession of counterfeit goods. But the judge, he was talking for half an hour about the fact that the guy is a foreigner. So he was saying how come you do this to your host country? We welcomed you, eh... and you were supposed to do proper job...how come you are selling counterfeit goods, you know...he was supposed to just render judgment you know on the fact that he was found possession of counterfeit goods. But in a way, he was xenophobic. The fact that the guy is from Ethiopia, now he is coming here (Sic). And South Africa welcomes the guy and all of a sudden, he is selling counterfeit goods you know....so I can say that may be some of them are xenophobic. That is what I can say...yeah, yeah. (Tesfaye, male, self employed)

Err...well...sometimes there is xenophobia....there are people who work in the system who are biased towards foreigners...I have had occasions where I have been asked to produce permits, when there is no need to produce permits. And there

are some prosecutors who do not understand the different categories of permits...err...so I think there is lack of knowledge as well as xenophobia. (Mare, male, hawker)

Theoretically speaking, there are many provisions in place that give just and fair treatment of the foreigner to that of local. However, when it comes to the real situation, it is different. If they see that you are not from here, their interest in you diminishes. You get discriminated against. You see this from the guards to the court officials. (Beyene, male, self employed)

The above extracts demonstrate that Tesfaye, Mare and Beyene had all experienced discrimination when interacting with justice system personnel. As Tesfaye noted, judges' duty is to give a just judgment without bias. It is the duty of the judges to be independent, impartial and to pursue justice. He felt that the judge was acting in contradiction to his call of duty by showing xenophobic sentiments. A negative attitude towards accused foreigners emanating from a judge is a prejudice and it constitutes a violation of the Constitution. South Africa's Constitution prohibits any unfair discrimination based on social origin. Everyone is entitled to fair trial, but as Tesfaye's experience shows, xenophobic attitudes may negatively influence trial. Mare noted that some justice system personnel lack knowledge of the different categories of refugees. This again may interfere in the administration of justice. Hence, it is important that justice system personnel get training on refugee affairs and Refugee laws.

4.3.2 Perception on xenophobia and police

All of the interviewees felt that they encountered xenophobic incidents while interacting with the police. They portray the police as unfriendly and indicated that they have experienced abuse and discrimination and hence do not trust the police. This corresponds with the findings of Crush (2000:114) who concluded that foreigners face a 'persistent pattern of harassment from authorities and citizens alike'. Arkiso, Debebe, Tareke and Tesfaye state their perception on police as follows:

The police err...yes. I think they are not friendly. To foreigners, especially, they treat us badly. Although they are notorious even with locals, I think the treatment of

foreigners is even worse. We get easily discriminated against and harassed. Of course, the treatment would have been different if I were South African. (Arkiso, male, self employed)

I did interact with the police on many occasions. I was stopped on the road by traffic cops as well as the SAPS. Well, sometimes they are rough in their approaches, especially when they realize that you are a foreigner. But I know that they are part of the law and I respect their uniforms. I interact with them politely and cooperate with what they tell me. I have been stopped by officers from all race groups-by Indians, whites, coloreds and Africans. Most of their approach is different. The treatment by African cops is much better and I prefer to be stopped by them. In all the other races, their approach was xenophobic and rough. The Indians are the worst. At first, when you get stopped, they greet and talk with respect. After they realise they are dealing with a foreigner, their approach changes. Yes, the treatment would have been different if I were a local. Definitely, there is a difference in the way the police interact with the foreigners, compared to the locals. (Debebe, male, hawker)

I had a bad impression about the police. They discourage us from opening a case and if they happen to open a case, they delay us. They ask where your ID is. Then when you say you are a refugee, they ask where your passport is-and we don't have passport. We carry refugee documents. Most of them do not understand that if you are a refugee, you do not carry a passport. They are unwilling to cooperate. One time, I wanted to get a police clearance and I went to a police station. The officers that were on duty were not willing to assist me unless I come with ID or passport. But according to the law, as long as I have refugee permit, they were supposed to help me. I then went to another station in a different place and they helped me get the police clearance. Also police don't come quickly when we call them. (Tareke, male, runs his own tuck shop)

The police, the moment they see you are not from here, lets say they see your name(for them, it is a funny name...yeah, laughter...), instead of telling you why he stopped you, he will then talk about what is the meaning of your name, where are you from, when you are going back, your ID, ...stuff like that. This is just pure

harassment. And I feel that police just take advantage of us....yeah...we get scared as we feel they can do what they like. (Tesfaye, male, self employed)

The police are the first line of contact in the justice system. Before criminal cases are considered, dockets have to be opened by the police. Police are also tasked with routine crime prevention and securing a safe and secure environment for all the people in South Africa. Despite this crucial role, frequent abuse of power by the police has been reported. There has been a number of research findings that show ill treatment of foreign nationals by the police (Crush, 2000; Harris, 2001; Landau, Ramjathan-Keogh, and Singh, 2004; Amisi and Ballard, 2005). The above extracts from Arkiso, Debebe, Tareke and Tesfaye all correspond with these findings. According to Wimmer's (1997) rational choice theory and Harris' (2001) scapegoating hypothesis, intolerance towards foreigners is partly because foreigners are believed to strain government resources and are also blamed for the various social ills in the country. This perhaps could be one of the reasons why police have negative attitude towards foreigners. Addis, an Ethiopian asylum seeker, attributes xenophobia to competition for employment and also to politicians deliberately fueling tensions between locals and foreigners to fulfill their interest. He states:

On the issue of xenophobia, I will say, what actually happened is, when the local people see migrants from other countries or specifically, from Africa, they feel that we are competitors, who have come to compete with them. They feel that we are here to take their resources. They have a feeling that other people from African countries are more educated, better skilled, and when they see people coming here with nothing, and within a short time they are able to do a lot, do business and make money, the local people always feel threatened. This is understandable. I think, I would also say that xenophobia is sometimes politically motivated where leaders can manipulate people and stir them to meet their interest. Also employers in farms, mines and different companies, also contribute to xenophobia when they employ migrants as cheap labour. When they see a migrant, they offer a job at a cheap wage and this also angers the local people as they would have taken the job at a higher wage had it not been for the foreigners. So this creates tension. The employers take advantage of migrant labour, because they know most migrants don't belong to trade unions or other organisations that fight for their rights and offer them a lower wage. So, the migrants being desperate to move on with their life just accept the offer and work as

cheap labourers. Then the local people say that they could have done the job at a higher wage and that tension contributes to xenophobia. On my view, I think the department of labour must address this problem and make sure that employers stick to the standard wage set by the government and not take advantage of migrants. (Addis, male, self employed)

Addis relates xenophobia to labour problems. He mentions that migrants' willingness to work at a low wage exacerbates the tensions between locals and foreigners. Locals blame their unemployment on foreigners. They may then vent out their frustration by showing xenophobic sentiments. Addis' argument corresponds with Harris' (2001) scapegoating hypothesis. When locals perceive that they are losing jobs because of migrants, foreigners become the scapegoats that may be subjected to attack (See chapter 2, section 2.4 for Harris' (2002) scapegoating hypothesis). In addition, Addis notes, political statements by notable government officials that associate the country's problems to foreigners often have negative consequences on migrants. He added that politicians also have a role in aggravating xenophobic incidents. In the same vein, Abebe, pastor of an Ethiopian church, argues as follows:

In South Africa even politicians ignite tensions towards foreigners. They make statements in the media, saying that we commit crimes, take jobs from local people and accuse us of all the ills in the society. This really surprises me. During apartheid, some South Africans went in exile and they were fighting against the apartheid regime. Most African countries offered them refugee, and were in solidarity with the struggle against apartheid. Nelson Mandela went Ethiopia for a military training and Ethiopian government at the time supported him. Now the very same country they are leading is hostile towards us. For example, I remember Mangustu Buthelezi, while he was the minister of home affairs, stated that millions of foreigners need to be sent back home as they are the ones straining the resources of the country. (Abebe, male, pastor)

Abebe and Addis both agree on the role of political statements in aggravating xenophobic tensions. Their argument corresponds with other research findings indicated in Chapter 2, section 2.8. The findings suggest that political statements attributing the country's problems

to foreigners often have negative consequences on migrants (Minnar, 2000; Harris, 2001; Peberdy, 2001; Landau, 2004).

Tesfaye, an asylum seeker from Ethiopia, attributes xenophobia to competition between local and foreign business owners. He also added that African immigrants are more likely to experience xenophobia than their European counterparts.

I know some shop owners think that foreigners are competing against their business by lowering their prices. They get angry and send people who attack and loot foreigners' shop. Some refer xenophobia in SA as Afrophobia because the attack was mainly to African migrants. You know if someone is from Germany for example, people will think he is from South Africa, because he is white. But if someone comes from the rest of Africa, people feel xenophobic. So we can say it is Afrophobia. (Tesfaye, male, self employed)

Tesfaye argues that xenophobic tensions arise due to competition between local and foreign owned businesses. His reasoning is in line with Harris' (2001) scapegoating hypothesis. When locals perceive that they are losing their livelihood because of migrants, foreigners become scapegoats and may be subjected to attack (See chapter 2, section 2.4 for Harris' (2002) scapegoating hypothesis). Tesfaye also points out those immigrants of European origin get favourable treatment. This corresponds with Nyamnjoh's findings. Nyamnjoh (2006), based on South African Migration's 1997 and 1998 survey reported that black African foreigners in South Africa are negatively perceived and are associated with various social ills of the country.

4.3.3 Perception on corruption

Corruption is a challenge to most government institutions. Within the South African police, corruption has become an impediment to meeting SAPS constitutional mandate. One of the most commonly held perceptions by the public on the police is that their leaders as well as ordinary members of the police service are corrupt. Perhaps one of the most publicised cases was the conviction of former National Commissioner of Police, Jackie Selebi of corruption charges in 2010 (Newham and Faull, 2011). All of the interviewees indicated that while

interacting with the justice system personnel, they experienced incidents of corruption. Most of them indicated the police are usually the ones who demand money in return for favour. Public prosecutors are also implicated in corruption. The following extracts reflect on this:

I was stopped by a police and he asked me for my ID paper. When I showed him, he said he didn't recognize the paper and that he will destroy it. Then he asked me to give him R50 and I had no choice, but obey. I knew I would be in trouble without the paper and I didn't want him to take or destroy my permits. (Arkiso, male, self employed)

One day I was driving using my international drivers' license from Ethiopia. I was stopped by a traffic officer and when he asked for a license I showed him. Although it is a valid one, he told me that it is not acceptable to drive with it and so he asked me I should make a plan to give him some money to let me go. Unless I make a plan, he said he would arrest me. I was obliged to give him R200 and he let me go. (Beyene, male, self employed)

I was stopped for jumping a robot. So they stopped me and I have to give the police R40. Yeah (chuckles)...I had to make a plan...it was a good plan, just R40. Yeah, I told the police that I only have R80 and asked if we could share (laughter) .When I gave him R40 and he was happy to let me go. The treatment was fine, he just asked driving license and then he asked me why crossed red robot and I told him I was scared to stop at night, and was too late. Yeah, the police said that I was not supposed to cross it even if it was late, but anyway, let me go with the R40. (Tsfaye, male, self employed)

One day, I was charged with driving under the influence of alcohol. I had to appear in court. I know that I was over the legal limit. I didn't want to appear in court. I went to the public prosecutor and paid him. My charges were withdrawn! (Getcho, male, owns a clothing shop)

I was stopped by the police and unfortunately, I forgot my papers at home. When the police officer asked for my ID, I told him I left it at home. Then he demanded some money, and even though I indicated that I can go home with him to show my

papers, he refused and in turn asked for R100. I gave him as I didn't have a choice. Even if we have the paper, sometimes, we fear they will tear the paper and so we give them money to avoid this hustle. (Mare, male, hawker)

Arkiso stated that the police threatened to destroy his permit unless he gives him money. Beyene was forced to give money despite his valid driver's license. Tesfaye paid a bribe to get away from his traffic offence. Getcho paid a public prosecutor to have his charges dropped. Mare was obliged to give money to avoid inconvenience. From the interviewees' accounts, one can infer that some of the justice system personnel are involved in corruption. It seems that it has become a norm among the police to demand and accept bribes without any hesitations. It is also worrying to see public prosecutors engage in bribes. Corruption is a serious obstruction to the overall function of the justice system. It indicates that there is some form of impunity for those people who break the law. This is against the constitutional mandate of the police and the public can lose confidence in the police. Therefore, it is very important to address and tackle challenges of corruption for fair administration of justice and accountability.

4.3.4 Perception on interactions with South Africans

Interviewees' account of their experience in interacting with locals was both positive and negative. Crush (2000) using the 1998 South African Migration Project's survey reached a similar conclusion. Not every migrant experience antiforeigner sentiment. The following extracts reflect attitudes of Ethiopian asylum seekers and refugees towards South Africans. It also reflects what they think about the hospitability of South Africans:

Well, as you know, you find different kinds of people. So some are friendly and welcoming, while others are hostile and say that we should go back home. It depends which area of SA you are in as well. In different provinces, they have different attitudes. I think those living around the border such as Limpopo, they are more tolerant, whereas in other areas such as in KZN townships, they call us names and are not friendly. They say 'amakwerekwere', that means some one who doesn't understand, foreign, stupid, undeveloped etc. The men, younger ones tend to be xenophobic. We get along well with the women. It also depends on race as well. As

for hospitality, I think we are more understanding and friendly towards visitors or foreigners. Here, I think if you come to live as refugee, they don't like it, especially if you are from Africa. (Abebe, male, pastor)

I think it depends what kind of people you are talking about and where you live. As you know, I cannot generalise. As I said before, elderly people who have seen a lot in their life understand us and are generally very welcoming. Women also, from my experience, are more welcoming. I think because women are welcoming to us, the men also get jealous. I think that might contribute in to younger men in being xenophobic towards us as they think we take their women and jobs-although we are self employed and do not take up their employment In fact, on the other hand, we create employment-we hire locals to assist us with our business. As for hospitability, I think as South Africa is a diverse country- with different races, again it is hard to generalise. I think they encounter lots of foreigners and the response from different race groups varies. Most young black men are xenophobic while the women are somehow welcoming. They would rather have someone from Europe, Asia or America than some one from Africa. I feel we are more hospitable. (Addis, male, self employed)

The above extracts show that experience of immigrants depends on the individual South African they interacted with. Both Abebe and Addis stated that it is not possible to generalise, but they indicated that South Africans are not as hospitable compared to their home country. Abebe stated that foreigners are named with a derogatory terms, reinforcing the notion of 'amakwerekwere' (see chapter 2, section 2.3 for detailed explanation of the terminology). Both Abebe and Addis argue that gender, age, geography and race are important in determining what their interaction with South Africans will be. They stated that women are usually friendly, while young men seem to show antforeigner sentiment. Geography is also an important factor. People living in border provinces and non-township areas seem to be more tolerant and understanding towards foreigners. This argument corresponds with Harris' (2002) isolation hypothesis. According to this hypothesis, due to the creation of strict boundaries between South Africans as well as between the country and other nations during apartheid era, South Africans are unable to accommodate and indeed tolerate difference. People living in the border area are more likely to have made contact with non-South Africans and it is possible that they become tolerant due to exposure to other nationalities.

Addis is also of the view that non-African foreigners are favoured than black African immigrants. This claim is similar to that of what Tesfaye mentioned in section 4.4.2 and reiterates the notion that black African immigrants are perceived negatively. Addis claims that most immigrants are self employed and do not take jobs from locals. On the contrary, Addis argues, most of them own business and employ other locals. This is in contrast to popular belief that foreigners take jobs and contribute to the rising unemployment. Valji (2003) drawing from SAMP's 1998 survey, drew similar conclusion: 70 immigrant entrepreneurs that are involved in business ventures in inner Johannesburg were interviewed and it was found that each of these migrants hired between two and four people, of which at least half were South Africans.

A common view shared by all the interviewees was that locals ask them when they would be going back home. This, according to the interviewees, makes them feel unwelcome. The following interviewees indicated negative perceptions with regards to their interactions with South Africans:

According to my experience, I don't feel welcome. There is always that element of non belongingness. I have been here for over ten years. I was supposed to be a citizen by now if it was not for the Home Affairs and all that. I still get questions like where I am from and when I will be going home...sometimes you hear people gossiping in their local languages about us. So I don't really feel at home. In my home country, we are very receptive and treat outsiders well. We actually embrace and love strangers. Here, we get discriminated on a daily basis. (Arkiso, male, self employed)

Arkiso reported that he faced discrimination on a daily basis and feels that he is not welcome. Beyene also felt likewise and added that South Africans are not hospitable:

I think where I come from; we are very hospitable compared to South Africans. We treat foreigners nicely. In here they don't bother. The moment they hear you talk and your accent is different, they know you are not from here, they ask you when do you go back home? And even if you tell them you can't go because of the situation you are in, they don't understand. I feel I get discriminated. I feel that they have definitely

a bad attitude to foreigners especially if you are from Africa. (Beyene, male, self employed)

Beyene pointed out that having an accent that is different from that of locals identifies him as an outsider. This can perhaps be explained by Harris' (2002) Bio-cultural hypothesis (See chapter 2), which includes elements of discourse theory, describing how labeling foreigners as 'others' leads to the marginalisation of minority groups and consequently, making them victims of xenophobia. In Beyene's case, his accent identifies him as 'other' and consequently causes him to be treated differently. Bio-cultural hypothesis discusses why foreigners become targets of xenophobic attacks by virtue of their physical features and their cultures including their language, which are distinct from that of the citizens. Having an accent that is different from that of citizens identifies migrants as outsiders and hence they get discriminated against, just like what Beyene experienced.

Debebe reflected on his xenophobic experience and expresses surprise at why South Africans do not return the favour they received from African countries during anti- apartheid struggle:

I think I am not welcome here.....they don't overtly say that I should go back.....but from my every day interaction, I sense that there is dislike towards foreigners. Some people that I know, every time we meet, they ask me when I am going to go back home. I tell them that I am here as a refugee and that unless the problems in my home are solved, I won't go back. But they don't understand. I think they accept us as refugees not because they like it, but because there are laws in place allowing refugees to stay in the country. Back in the apartheid days, when blacks were oppressed by minority whites, our country supported their struggle against apartheid. Even Nelson Mandela came to Ethiopia to get military training. Now we have political problems at home and it is really sad and surprising that we get badly treated. (Debebe, male, hawker)

Debebe felt unwelcome by the repeated questions he got as to when he would go back home. He reflects on South Africa's past struggle against apartheid and he felt surprised and saddened at the way South Africans treat foreigners given the fact that they had a support from Ethiopia. Debebe's view can be explained by Harris's (2002) isolation hypothesis. South Africans have been isolated from the international community for many years during

apartheid regime. In this hypothesis, foreigners represent the unknown to South Africans. With the political transition, however, South Africa's borders have opened up and the country has become integrated into the international community. This has brought South Africans into direct contact with the unknown; with foreigners. The interface between the previously isolated South Africans and unknown foreigners creates hostility.

Mare and Rahel indicated that they experienced xenophobia that is manifested in violence. They claimed that xenophobia in South Africa has elements of physical violence:

I think the majority considers us as nuisance. Most are hostile and don't like foreigners. There is also physical manifestation of dislike to foreigners...we have seen people beating foreigners...harassed by police....so yes, they do have, I wouldn't say hate, but dislike towards a foreigner...I have experienced it in most places...when I take the taxis, they assume you know the indigenous language. They ask questions. If you don't reply, they may insult you or say bad things about you....I have been called 'makwerekwere'....err....well there are many names assigned to foreigners, not nice names you know....I couldn't recall the other names now....well, err....the words are meant to insult foreigners, usually black foreigners. (Mare, male, hawker)

Every country has xenophobia; it is the degree that differs. I think it is higher here....It could be because there are a lot of foreigners here....it is not only hate; you know....there are also beatings you know...killings, you know....in many other countries, they don't kill....that is why I said the degree of xenophobic attitudes differs. I think we are more hospitable than South Africans. Perhaps it is ingrained in our culture to welcome strangers. (Rahel, female, co-owns a clothing shop)

Mare reported on the role of indigenous language in identifying locals from foreigners. He indicated that if he doesn't respond in the local language, then he gets hostile reactions from locals: using terms like makwerekwere. Mare's experience corresponds with the explanation provided by Harris's (2001) Bio-cultural hypothesis. The bio-cultural hypothesis discusses why foreigners become targets of xenophobic attacks by virtue of their physical features, their cultures and languages, which are distinct, from that of the citizens.

Not being able to speak the indigenous language made Mare to be easily picked up as an outsider and consequently to get discriminated against. Peberdy (2001), Crush and Williams (2002b) and Valji (2003) note that African migrants are most often targeted by law enforcement officials and the general public. They are usually identified by physical features such as skin colour, vaccination marks, traditional marks as well as accent, language ability and the way they dress(See chapter 2, section 2.6 for details).

Mare claims that foreigners get beaten and also get harassed by the police. Likewise, Rahel stated that foreigners face xenophobia related attacks that include killings. A number of studies had similar findings. In South Africa, xenophobia doesn't only denote dislike or hatred towards foreigners, but is often accompanied by physical violence against those identified as foreigners (Minnaar, 2000; Valji, 2003; Masuku, 2006; Misago, Landau and Monson, 2009; SAHRC, 2010). It is therefore important to understand physical manifestations of xenophobic related incidents in this context.

Crush and Pendleton (2004) state that there is a generalised perception among citizens in Southern Africa that they are being overwhelmed by the number of foreigners coming as migrants. They argue that this perception may fuel xenophobia. The above interviewees all indicated negative interaction with South Africans. They felt that they are not welcome. This perhaps could be, as Crush and Pendleton's (2004) findings indicate, due to locals' perception of them being surrounded by many migrants.

4.4 Challenges faced by Ethiopian asylum seekers and refugees

All of the Ethiopian asylum seekers and refugees voiced their concern about being targets of crime and also being vulnerable to police abuse and harassment. The following extracts reflect on this:

I live in an area where there are Ethiopian immigrants. So we encounter many incidents where the police come and do random checks on our residences. The police claim they come to check stolen goods and suspected drug dealings. But the reality is that they actually come to loot us. They claim that they are looking for stolen items, but they come and take our possessions. Sometimes, they come up with some drug packages, like dagga and put it in our residence while they claim that they are

doing the searches. Then they threaten to arrest us. They tell us they will do the cover up if we pay them. In the first place, they are the ones who came up with it and now they blackmail us. We become their source of income. I think they do this to us when ever they feel broke. (Addis, male hawker)

Tesfaye and Abebe narrate similar incidents:

Three-four years ago, at a residence where some Ethiopians live, four policemen, actually went to one of these rooms. They first locked the door and asked every one for their permit. They showed them their permit. Then the two policemen requested and said that every one must go as they want to search their room for illegal goods...okay. So everyone went out. This was on the news if you want to check for yourself I think they also told me it was in Mercury newspaper. Anyway, so the two other police remained and ransacked every thing in the house and managed to get R26, 000. You know the 'Hosannas', the people from the Southern part of Ethiopia, err....most of them they don't have bank account...err... they like putting money under their mattress...so the police got the R26, 000 just like that... and then they told everybody to go back to their rooms...basically they finished their job.....they went to their rooms and the money was gone...they tried to fight for it, but they never succeeded to get the money back So what do I think about the police? They are abusive and corrupt you know. (Tesfaye, male, self employed)

At first, the biggest problem was not being able to open bank account. The banks were not accepting asylum seeker permits. By law we are allowed to work and study. And when we do our own business, it became hard to put our money in a safe place like a bank. Some police knew about this and they come and raid the place we stay in. They take our money because some of us were keeping it in our place of residence. Now it is different. Some banks are accepting asylum documents. (Abebe, male, pastor)

Addis claims that police go to place of immigrants to extort money. They deliberately implant drugs to accuse refugees of possession of drugs. To avoid the hustle of going through arrest, refugees then resort to making some kind of monetary arrangement with the police. Likewise, Tesfaye and Abebe claim that police harass and abuse refugees by invading their

premises without search warrants. Refugees are usually too scared or unaware of their rights. As Tesfaye and Abebe state, most of them do not have bank account. They surrender to police demands and end up being robbed of their saving by the very same officers who were supposed to protect them. This finding corresponds with a number of studies. There are many instances that non-nationals are particular targets for police harassment (Crush, 2000; Amisi and Ballard, 2005; Landau, Ramjathan-Keogh, and Singh, 2004). Crush (2000) notes that intolerance is extremely pervasive and is growing in intensity and seriousness. “Abuse of migrants and refugees has intensified and there is little support for the idea of migrant rights” (Crush, 2000:103).

Another challenge reported by all immigrants is the issue of residence permit. The Home Affairs department is responsible for issuing of asylum seeker and refugee permit. They all indicated that they feel insecure about their residential status and agreed that they are at the mercy of Home Affairs officials that often extort bribe in return for the extension of their permit. All of them indicated that the process is lengthy and full of corrupt procedure. The following extracts from Tigist and Mare reflect on the problems of asylum seekers and refugees regarding their permit

I think the biggest problem we face in Home Affairs is corruption. Everyone, starting from the guard, interpreters and Home Affairs officials ask money. Basically, nothing gets accomplished without paying a bribe. The securities at the gates ask for money to allow people who come late, so they would avoid the queue. The Home Affairs officials take bribes to speedily facilitate asylum procedure. (Tigist, female, runs her own restaurant)

Residence permit is the biggest challenge we immigrants face. I have lived here for over ten years and I still live on asylum seekers permit. I applied when I first came in 2001. I have been renewing my permit since then and I am still waiting for my refugee status. The Home Affairs department is so corrupt that I used to send my paper with someone whom I pay R100 and they renew my permit for six month. They changed the procedure I think some time in 2008, where they asked us to come physically. Even then, we had to pay if we want to avoid the queue. We also get longer period when we pay the officials. I feel insecure because of all this. Although the law allows us to work and study, most employers as well as government

officials are not aware of that and we also have problems of accessing some banks. (Mare, male, hawker)

Both Tigist and Mare demonstrate the challenges asylum seekers and refugees face. Some banks do not accept residence permit of these types of immigrants. They also noted that corruption at Home Affairs department is rampant and they had to pay in order to facilitate renewal. This is in line with Segale's (2004) findings: "Out of desperation, asylum/refugee applicants are often forced to fork out 'fees' ranging from R300 to R1,000 depending on the specific service in question and the country they come from". Similarly, Landau, Ramjathan-Keogh, and Singh (2004:26) mention that "[over] the past years, it has become increasingly evident that unless asylum seekers—who have rights to be in South Africa under international and national law—are willing to pay bribes or other unofficial 'fees,' they may be denied the right to even file an asylum claim". The asylum process is extremely slow and once asylum seekers manage to get the permit, there are limits on what asylum seekers can accomplish with that kind of permit. This corresponds to the findings of Palmary (2002) who states that the processing of asylum applications is slow and inefficient. One of the reasons mentioned was the belief that Home Affairs officials were purposely processing asylum cases slowly so that delays in the system facilitate corruption - each time asylum-seekers go back to the offices of Home Affairs to enquire about their status, officials can extract bribes from them (Palmary, 2002). Since April 2004, the standing Committee on Refugee Affairs took the decision to remove the prohibition against work and study for asylum seekers. Despite this fact, as Landau, Ramjathan-Keogh, and Singh (2004) note, many employers simply do not recognise asylum seeker or refugee permit papers and are unwilling to hire them out of the belief that they do not have rights to work. Besides, some banks do not recognise refugee permits. Therefore, there are limits to what asylum seekers can accomplish with their permit paper.

The queue at the Refugee Reception is chaotic. It is interesting to note that some people take advantage of this and engage in pick-pocketing. Debebe states as follows:

People fight in the queue. There is even a rumor which says that some people (Zimbabweans, Tanzanians) just go there to steal cell phones, you know, because when people are on the queue for long, they sometimes don't concentrate, and you may not know what is happening around your pocket. So, some just go there just to

steal. You know, they use this opportunity to pickpocket people on the queue and it is a means of survival for them. (Debebe, male, hawker)

Despite the long and chaotic queue, there would be space for those who come later in the day- if they pay money to the security guards, they can get easy access, faster than those who came early. This is in line with the findings of Landau, Ramjathan-Keogh, and Singh (2004) who state that late comers pay guards to have access to the building.

4.5 Summary

Everyone in South Africa, including foreigners, has a fair chance of interacting within the South African justice system, either as complainants or witness or may be as accused. Asylum seekers and refugees experience with the justice system has to be understood within the context of services the justice system has to provide under its constitutional mandate. Access to the justice system is, in this case, much like any service provision accorded to citizens and foreigners alike. This chapter has explored two dimensions of concern that are interrelated. On the one hand, it looked at the perception of justice system personnel about the foreign migrants and their access to and encounter with the justice system. On the other hand, perceptions of foreign migrants about the justice system and its personnel, and actual experiences of encounters with the individuals and departments in the justice system, were explored. It is very important to note, perception about the system is likely to impact upon how one relates to the system, and in the same way perception about the South African “other” is likely to reflect how the “other” is treated.

The findings show that the majority of the justice system personnel said that foreigners are equal in the eyes of the law and do not get discriminated against. However, two police officers indicated that foreigners commit crimes and do not deserve to enjoy what the law has to offer. It was also found that except for one magistrate, none of them is familiar with the provisions of the Refugee Act 130 of 1998. The justice system personnel acknowledged that some of the perpetrators of xenophobic violence were not charged. They said that this resulted in scenarios where they were unable to properly identify suspected individuals and subsequent withdrawal of charges. Another challenge is loss of dockets due to negligence and corruption. It was cited as one of the reasons for withdrawal of cases from court roll.

From the Ethiopian immigrants' perspective, their experience in accessing justice system was both positive and negative. Most of the interviewee's agreed that the system is fair and that there are good provisions within the justice system that accommodates everyone. Some, however, expressed discontent and claimed that they faced discrimination. Some of the interviewees indicated that they get discriminated by virtue of being foreigners. Some even expressed that they have experienced xenophobia in courts. All of the interviewees felt that they encountered xenophobic incidents while interacting with the police. All of the interviewees also pointed out that they had experienced corruption while trying to access the justice system.

All of the Ethiopian asylum seekers and refugees voiced their concern about being targets of crime and also being vulnerable to police abuse and harassment. It was found that police go to where most refugees reside and deliberately implant drugs to accuse them of possession of drugs. The findings suggest that police harass and abuse refugees by invading their premises without search warrant.

Chapter 5

CONCLUSION AND RECOMMENDATIONS

At present, there is a dramatic increase in migration across international borders voluntarily in search of better lives or due to forceful circumstances such as political instability, wars, and natural disasters. Immigrant receiving countries are faced with an overwhelming number of people and this may cause controversy because of the perceived fears that they may be competing unfairly with hosts for jobs, housing and other welfare services. Hence, migrants are increasingly becoming susceptible to racism, xenophobia and discrimination (IOL, IOM, OHCHR, 2001; Adepoju, 2003; Cross and Omuluabi, 2006; UNHCR, 2011).

South Africa's transition from the apartheid regime to the new democratic state drew many immigrants from Africa and other parts of world. Although there are many other migrants from other continents, African migrants are mostly vulnerable to xenophobia and discrimination. While there are a growing number of xenophobic incidents in South Africa, it is by no means unique. Many xenophobic incidents were recorded internationally as well (Adepoju, 2003; Valji, 2003; Gqola, 2008; Haigh and Solomon, 2008; Hassim, Kupe and Worby, 2008; Mngxitma, 2010; Thakur, 2011).

The Constitution protects the rights of all people living in South Africa. This includes citizens as well as migrants. As such, migrants have equal access to the justice system, and they have the right to initiate and proceed with legal matters through the justice system without hindrances. On the side of the state, access to justice also includes the obligation of the state to investigate violations and persecute the perpetrators according to the law (SAHRC, 2010).

This study looked at xenophobia from the perspective of justice system personnel as well as Ethiopian asylum seekers and refugees. It interrogated the experience of Ethiopian asylum seekers and refugees in accessing the justice system within the greater Newcastle area. It also looked at the perception of justice system personnel in Newcastle on the services they provide to non-South Africans. The following sections summarise the key findings.

5.1 Summary of main findings

This study has attempted to answer the research questions posed in Chapter 1: First, what is the perception of justice system personnel on the services they provide to non-South Africans? How do justice system personnel respond to the needs of refugees and asylum seekers? The account justice system personnel give of the services they provide to non-South Africans was overwhelmingly positive. The majority of the justice system personnel said that foreigners are equal in the eyes of the law, and in their opinion do not experience discrimination when they have contact with the justice system. All of the justice system personnel agreed that everyone is given an opportunity to speak in the language of the individual's choice, and also given the opportunity for legal representation at the expense of the state if the person can't afford to pay for legal representation. However, some of them showed bias towards foreigners. This is particularly true of the police officers, usually the first point of contact with the justice system. There was a perception among the police officers who participated in this study that foreigners commit crimes and do not deserve to enjoy what protection the law has to offer. This perception is likely to reflect how the "other" is treated and this may be the reason why the majority of immigrants reported abuse and harassment from the police. Negative perception, however, was not only confined to the first point of contact. One of the magistrates in this study, Sarah, stated that foreigners commit crimes attributing it to their behaviour. Magistrates have the role of an umpire in insuring a fair trial. They are supposed to be independent and neutral. This kind of negative attitude towards foreigners, especially emanating from magistrates, may amount to prejudice. It may therefore negatively influence the outcome of the judicial procedure.

Similarly, Thabo, one of the prosecutors, attributes competition for jobs between locals and foreigners as one of the reasons why foreigners become target of discrimination and violence. Another reason put forward was the notion that they are stealing their women and also the claim that foreigners are the ones who are committing crime. This explanation supports Harris's (2002) scapegoating hypothesis. She states in her hypothesis that xenophobic violence against immigrants is due to competition for limited resources such as housing, education, health care and employment. When locals are frustrated over failure of service delivery, they vent out their frustrations on foreigners, claiming that they are jobless because of them. A number of studies have also indicated similar findings (see chapter 2 for

details). The findings assert that locals relate the country's social ills to the presence of foreigners and justify their xenophobic sentiments by causally linking social problems to foreigners: taking away jobs from them and therefore contributing to rise in unemployment; competing with locals for scarce resources such as housing; contributing to the breakdown in family structures, substance abuse and crime (Croucher, 1999; Minnaar, 2000; Adepoju, 2003; Valji, 2003; Landau, 2004; HSRC, 2008; McKnight, 2008; Everatt, 2010; SAHRC, 2010).

In contrast to popular belief that foreigners take jobs and contribute to rising unemployment, all of participants in this study are self employed and do not take jobs from locals. Some of them own business and employ other locals. Valji (2003) drawing from SAMP's 1998 survey, drew similar conclusion: 70 immigrant entrepreneurs that are involved in business ventures in inner Johannesburg were interviewed and it was found that each of these migrants hired between two and four people, of which at least half were South Africans.

The Refugee Act of 1998 governs the rights of asylum seekers and refugees in South Africa. It allows them to study and work. It acknowledges the rights of refugees and asylum seekers as enshrined in the Bill of Rights of the constitution. It entitles refugees to protection and also access to basic services such as health and primary education just like any South African citizen. Justice system personnel interact daily with refugees and asylum seekers. All of the justice system personnel were asked about their knowledge on refugee laws. Except for one magistrate, none of them is familiar with the provisions of the Refugee Act 130 of 1998. Lack of knowledge or familiarity with refugee laws may be an obstacle in day to day running of courts. When cases involving refugees appear in court, how would police officers, prosecutors, Legal Aid attorneys and magistrates deal with it if they don't have acceptable working knowledge of refugee laws? If they are not familiar with the law, then it would mean unnecessary delay in court proceedings. They could then be obliged to do their own research for information regarding refugee laws to enable them to continue with the matter and this consumes court time. From my experience as a court interpreter, some of the prosecutors and Legal Aid attorneys I interacted with had to postpone cases a number of times due to lack of knowledge of the Refugee Act. It is therefore very important that some kind of training be provided to justice system personnel to help them understand the Refugee Act.

Harris (2002) describes a culture of violence as a situation where social relations and interactions are governed by using violence as a means of solving problems. During the apartheid regime, the so called 'people's courts' or 'disciplinary committees' served as political community justice (Misago, Landau and Monson, 2009). In the new South Africa, people often resort to violence to vent out their frustration over failure of social service delivery. This is explained by scapegoating hypothesis. Harris (2002) relates the scapegoating hypothesis to competition for limited resources such as housing, education, health care and employment. Migrants have been viewed as a cheap source of labour by some employers and hence have been accused of stealing jobs from locals and worsening the already high unemployment rate (Maharaj, 2004; Zuberi and Sibanda, 2004). The perception by locals that foreigners are responsible for the various social ills created a favorable ground for vigilantism because people vented their frustrations of unmet needs towards foreigners. Mob justice is however against the law, as it breaches human rights and disrespects human life. It manifests usually in the form of violence that leads to death. Hence, vigilantism, instead of containing crime, aggravates lawlessness.

The justice system personnel acknowledged that some of the perpetrators of xenophobic violence were not charged. They attributed withdrawal of cases to lack of evidence because most of the xenophobic incidents were perpetrated by vigilante groups. In order to convict someone, the state must prove that the accused person committed the offence beyond reasonable doubt. Proving this requires sufficient evidence. Hence, being unable to properly identify suspected individuals resulted in withdrawal of charges. Another worrying explanation on why some cases get withdrawn in mob justice scenario is where dockets get lost due to corruption and negligence. This again constitutes an impediment for investigation of cases and consequently contributing to inefficiency in the functioning of the justice system. To combat loss of dockets, measures are now put in place to scan every docket that is opened.

Second, what are the experiences and perceptions of asylum seekers and refugees on the justice system's services they receive? Interviewees' account of their experience in accessing the justice system was both positive and negative. Most of the interviewees agreed that the system is fair and that there are good provisions within the justice system that accommodate everyone. Some, however, expressed discontent and claimed that they faced discrimination. Some even expressed that they have experienced xenophobia in courts. Some of the

interviewees felt this discrimination was simply because they were foreigners. This can be explained by the bio-cultural hypothesis. The bio-cultural hypothesis discusses why foreigners become targets of xenophobic attacks by virtue of their physical features and their cultures, which are distinct, from that of the citizens. Physical, biological factors and cultural differences exhibited by African foreigners in South Africa makes them vulnerable to discrimination than other foreigners who have the same feature as that of South Africans. Peberdy (2001), Crush and Williams (2002b) and Valji (2003) note that African migrants are most often targeted by law enforcement officials and the general public. They are usually identified by physical features such as skin colour, vaccination marks, traditional marks as well as accent, language ability and the way they dress.

South Africa's Constitution prohibits any unfair discrimination based on social origin. Everyone is entitled to a fair trial, but as some of the interviewees report, xenophobic attitudes may have negatively influenced trial. Interviewees noted that some justice system personnel lack knowledge of the different categories of refugees. This again, I think, interferes with the administration of justice. Hence, it is important that justice system personnel get training on refugee affairs and refugee laws. All of the interviewees felt that they encountered xenophobic incidents while interacting with the police. They portray the police as unfriendly and indicated that they have experienced abuse and discrimination and hence do not trust the police. All of the interviewees also pointed out that they had experienced corruption while trying to access the justice system. Therefore, it is very imperative to address and tackle challenges of corruption for fair administration of justice and accountability.

Third, what problems (if any) do they encounter when interacting with the locals and accessing these services? Experience of immigrants depends on the particularities of the South Africans they interacted with. Most participants in this study indicated that South Africans are not as hospitable compared to their home country. It was found that gender, age, geography and race are important in determining what their interaction with South Africans will be. They stated that women are usually friendly, while young men seem to show antforeigner sentiment. Geography is also an important factor. People living in border provinces and non-township areas seem to be more tolerant and understanding towards foreigners. This argument corresponds with Harris' (2002) isolation hypothesis. According to this hypothesis, due to the creation of strict boundaries between South Africans as well as

between the country and other nations during apartheid era, South Africans are unable to accommodate and indeed tolerate difference. People living in the border area are more likely to have made contact with non-South Africans and it is possible that they become tolerant due to exposure to other nationalities.

A common view shared by all the interviewees was that they get questions from locals when they would be going back home. This, according to the interviewees, makes them feel unwelcome. Beyene, one of the self employed Ethiopian immigrants, pointed out that having an accent that is different from that of locals identifies him as an outsider. This can perhaps be explained by Harris' (2002) Bio-cultural hypothesis. Bio-cultural hypothesis describes how labeling foreigners as 'others' leads to the marginalisation of minority groups and consequently, being victims of xenophobia. In Beyene's case, his accent identifies him as 'other' and consequently he would be treated differently. Bio-cultural hypothesis discusses why foreigners become targets of xenophobic attacks by virtue of their physical features and their cultures including their language, which are distinct from that of the citizens. Having different accent to that of citizens identifies migrants as outsiders and hence get discriminated, just like Beyene's experience.

Debebe, one of the Ethiopian immigrants, reflected on South Africa's past struggle against apartheid and he felt surprised and saddened at the way South Africans treat foreigners given the fact that they had a support from Ethiopia. Debebe's view can be explained by Harris (2002) isolation hypothesis. South Africans have been isolated from the international community for many years during apartheid regime. In this hypothesis, foreigners represent the unknown to South Africans. With the political transition, however, South Africa's borders have opened up and the country has become integrated into the international community. This has brought South Africans into direct contact with the unknown; with foreigners. The interface between the previously isolated South Africans and unknown foreigners creates hostility. This could be the reason why immigrants felt unwelcome.

All of the Ethiopian asylum seekers and refugees voiced their concern about being targets of crime and also being vulnerable to police abuse and harassment. It was found that police go to where most refugees reside and deliberately implant drugs to accuse them of possession of drugs. To avoid the hustle of going through arrest, refugees then resort to making some kind of monetary arrangement with the police. Likewise, the findings suggest that police harass

and abuse refugees by invading their premises without a search warrant. Refugees and asylum seekers are usually too scared or unaware of their rights to refuse or report this infringement. Most refugees and asylum seekers do not have bank accounts. The asylum seekers and refugees noted that in surrendering to police demands, they end up being robbed of their savings by the very same officers who were supposed to protect them. They all indicated that they feel insecure about their residential status and agreed that they are at the mercy of Home Affairs officials that often extort bribes in return for the extension of their permit.

5.2 Some recommendations for the state

The key findings reveal that most justice system personnel are not aware of Refugee Laws. Besides, asylum seekers and refugees face discrimination and xenophobia. As can be seen from appendix 1, there are still ongoing reports of xenophobic incidents nationwide. It was also found that asylum seekers and refugees are vulnerable to abuse and corruption from the police and Home Affairs officials. These problems make the lives of refugees and asylum seekers difficult. Therefore, diverse approaches need to be taken into consideration in order to tackle those problems. Providing training and education on the South African Immigration Act and Refugee Law to the people working in the justice system such as the prosecutors, magistrates and SAPS personnel will go a long way in alleviating these problems.

To allow for recognition of the different categories of immigrant permits, there should also be a workshop organised to inform and educate government officials about asylum seekers and refugee rights and about the validity of the refugee permits. This would ensure recognition of asylum seeker and refugee permits in various government departments, and eases public service delivery problems. Police were implicated in corruption and abuse of foreigners. It is recommended that information and education be given to refugees and asylum seekers regarding their rights and about the different components of the justice system and also to encourage them to report police misconduct and corruption to Independent Complaints Directorate. Likewise, the public needs to be sensitised through awareness campaigns about foreigners to decrease xenophobic sentiments.

The current procedure in the asylum and refugee status is slow and so the Department of Home Affairs needs to decrease this backlog by introducing efficient and speedy services. Strict supervision of Home Affairs officials should also be introduced to decrease incidents of bribery and corruption.

5.3 Recommendations for further research

This study is valuable in providing a specific insight in revealing the questions the researcher sought to answer, which may further be applicable to other immigrant communities. However, it focused on the perception of Ethiopian immigrants living in Newcastle area regarding justice system service. It is limited in scope as the views from migrants from other countries are not considered. In addition, the perspectives from the justice system personnel encompassed only those in Newcastle. Therefore, a more comprehensive, interprovincial study needs to be undertaken from both the immigrants as well as the justice system perspective to have a broad understanding and to make a meaningful generalisation.

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**Appendix 1: Ongoing violence against foreign nationals (June 2009-
November 2010). Data source: CoMRSA 2011: pp58-64**

Month	Year	Province	Place	Description
Jun	2009	Western Cape	Delft	Businesspeople hold meetings to discuss ways of evicting foreign shop owners. Three Somali shop assistants are shot and injured.
Jun	2009	Western Cape	Masiphumelele	Businesspeople hold meetings to discuss ways of evicting foreign shop owners.
Jun	2009	Western Cape	Samora Machel	Businesspeople hold meetings to discuss ways of evicting foreign shop owners.
Jun	2009	Western Cape	Gugulethu	Businesspeople hold meetings to discuss ways of evicting foreign shop owners. A letter is delivered to all foreign-owned shops on 14 June saying they must leave the area by 20 June.
Jun	2009	Western Cape	Khayelitsha	Two Somali shop assistants are burnt to death when their shop is set alight in the night. A Zimbabwean and a Bangladeshi are murdered.
Jun	2009	Limpopo	Giyani	Local business owners announce over the radio that foreign shop keepers must leave the town. The local police commissioner intervenes and they withdraw the threat.
Jun	2009	Limpopo	Mpeni	Zimbabwean nationals are chased out of the village.
Jun	2009	Western Cape	Nyanga	An Angolan man approaching the Nyanga Refugee Reception Centre is stabbed to death after resisting a group of men who mugged him and told him to return to his country.
Jun	2009	Western Cape	Franschhoek	A large group of residents stones foreign-owned businesses during a dispute over food prices.
Jul	2009	Mpumalanga	eThandukukhanya / Piet Retief	A service delivery protest turns violent and participants loot shops and chase away foreign shop keepers.

Jul	2009	Mpumalanga	Siyathemba / Balfour	Service delivery protests result in attacks on foreign nationals owning shops in the area. 122 people are displaced, including Ethiopians, Indians, Pakistanis, Bangladeshis and Malawians. Protestors stone police cars and police officers trying to protect the shops. 123 protesters are arrested. Victims of the violence are later intimidated into dropping charges against looters.
Jul	2009	Limpopo	Mashau	South African residents attack and displace 20 Zimbabwean nationals from the village. Local police are alerted the day before but fail to prevent the attack. Witnesses claim police transported the perpetrators. The displaced men had all not been paid for work they had been doing in the village; one man had worked without pay for a year.
Jul	2009	Mpumalanga	Sakhile	Residents attack foreign-owned shops during service delivery protests.
Jul	2009	Western Cape	Gugulethu	The Anti-Eviction Campaign brokers a peace deal after South African shop owners issue eviction notices to their Somali counterparts.
Jul	2009	Gauteng	Diepsloot	A housing protest turns violent resulting in Pakistani-run shops being looted.
Oct	2009	Northern Cape	Barkley West	A number of Somali nationals are displaced by xenophobic violence.
Nov	2009	Western Cape	De Doorns	Around 2500 Zimbabwean nationals are displaced from the small farming town, reportedly due to competition among labour brokers for facilitating jobs on the nearby farms. Several hundred people remained in shelters until the end of 2010.
Nov	2009	Free State	Bothaville	Somali traders are threatened and told to leave the area.

Dec	2009	Limpopo	Westernburg / Polokwane	A clash between Zimbabwean nationals and South African youth over suspected murder charges leaves 100 Zimbabwean nationals displaced and seven badly injured. After two weeks in a 'safe zone' most of the displaced found alternative accommodation in the area.
Jan	2010	Gauteng	Itireleng / Atteridgeville	Residents threaten to evict foreigners from the informal settlement after the Red Ants demolish illegally built shacks in the area, leaving 500 families homeless.
Jan	2010	Western Cape	Riviersonderend	20 Somali nationals are chased out of the town and their shops looted following allegations that they were responsible for the death of a youth. The youth was later found to have died of natural causes. One person was arrested for public violence.
Jan	2010	Western Cape	Cape Town	Police officers rob and assault a Burundian asylum seeker whilst making xenophobic remarks.
Feb	2010	Mpumalanga	Siyathemba/ Balfour	Protests against a local mine as well as service delivery protests result in residents looting the shops of 70 foreign nationals for the second time in seven months. Most of those displaced had also been chased out of their homes during similar violence in July 2009. 22 people are arrested for public violence.
Feb	2010	Gauteng	Orange Farm	After a service delivery protest, 17 shops belonging to foreign nationals are looted in Driezik section, Extensions 5, 6, 7 and 8, and Ema Chineni, and foreigners are displaced from the area. The displaced included Ethiopians, Somalis and Mozambicans. Local police allegedly knew of the attacks but did not intervene.
Mar	2010	Gauteng	Atteridgeville	9 Somali-owned shops are looted and burnt. Because SAPS was warned in advance of the potential of looting connected to a planned service delivery protest, further looting was prevented through an active police presence.

Mar	2010	Eastern Cape	Kuyga	Somali shops are looted by hundreds of residents in Kuyga informal settlement near Port Elizabeth. It is alleged that the instigators were rival Somali traders.
Mar	2010	Gauteng	Diepsloot	80 foreign shop owners in Extensions 8, 9, 10, 11 and 12 are forced to pay protection fees to locals to prevent their shops being looted during a service delivery protest.
Apr	2010	Western Cape	Wallacedene	A Zimbabwean man is stoned to death and beaten with a hammer by a group saying they want to remove foreigners from the area.
Apr	2010	Western Cape	Malmesbury	School children protesting about overcrowding in schools turn violent. Somali shops are attacked and robbed.
Apr	2010	Gauteng	Benoni	Metro police officials arrest a number of Somali shop keepers on immigration charges. When the Somali nationals are later released as their documents were in order, they find that their shops have been robbed.
Apr	2010	Western Cape	Moreesburg	A letter is circulated ordering Somali nationals to close their shops and leave town.
May	2010	Western Cape	Cape Town	A Somali shopkeeper is shot in the city centre and robbed of R17 000.
May	2010	Mpumalanga	Leandra	Violence and looting of Somali owned shops
May	2010	Free State	Iraq phase 2, Sasolburg	A fight between a Somali national and another resident result in community violence where 15 foreign-owned shops are looted and 42 people displaced. Further escalation to neighbouring areas is prevented through intervention by the municipality and the police.
May	2010	Western Cape	Wolsley	Local residents attack a shop owned by Ethiopian nationals and attack the police when they try to intervene.
Jun	2010	Gauteng	Mamelodi East	Eight people are arrested for public violence regarding attacks on foreign nationals. ⁴²¹

Jul	2010	Gauteng	Mayfair	A group of around 15 people attack three Somali houses around 4am. They run off when a police car approaches.
Jul	2010	Western Cape	Nyanga	Foreign-owned shops looted. Seven men arrested and charged with public violence.
Jul	2010	Western Cape	Klapmuts	Foreign-owned shops are looted.
Jul	2010	Western Cape	Khayelitsha	A Somali shop is looted on 9 July nearby where Police Minister addressed an anti-xenophobia rally. Three Somali men are hijacked on 10 July on their way to stock their shop. Driven to a remote area, one is shot dead and two end up in hospital. Foreign-owned shops are looted on 12 July.
Jul	2010	Western Cape	Masiphumelele	Residents threaten to evict all foreign nationals by 3 am on 12 July, after the final game of the Soccer World Cup.
Jul	2010	Western Cape	Philippi	Foreign-owned shops are looted.
Jul	2010	Western Cape	Mbekweni	Foreign-owned shops are looted. 70 people seek shelter at the police station.
Jul	2010	Western Cape	Wellington	Foreign-owned shops are looted. 22 people seek shelter at the police station.
Jul	2010	Western Cape	Franschhoek	Foreign-owned shops are looted on 11 July. 11 Somalis and 20 Malawians seek shelter at the police station.
Jul	2010	Western Cape	Du Noon	A foreign-owned hair salon is attacked.
Jul	2010	Western Cape	Worcester	Two Somali nationals are shot dead and two others injured. Police suspect rival traders.
Jul	2010	Gauteng	Daveyton	Two Somali nationals are attacked in their shop on 11 July.
Jul	2010	Gauteng	Etwatwa	A Somali-owned shop is looted but community members assist in chasing away attackers.
Jul	2010	KwaZulu-Natal	Bottlebrush	One person is hospitalised in violence against foreign residents.

Jul	2010	Western Cape	Grabouw	Foreign-owned shops are looted.
Jul	2010	Gauteng	Kya Sands	Sixteen people are injured after foreign-owned shops are looted in Kya Sands. Two are seriously injured. Police arrest 10 people in connection with the looting and government officials visit the area to calm the situation.
Jul	2010	Western Cape	Nyanga	A Somali shop keeper is shot in the face. Assailants flee without stealing anything.
Jul	2010	Eastern Cape	Walmer	Two Ethiopian shopkeepers are shot dead in their shop. No goods are taken.
Jul	2010	Western Cape	Kuyga	A Somali national is shot dead in his shop after receiving threats warning him not to trade. Police suspect other Somali traders.
Jul	2010	Western Cape	Wallacedene	Two Somali nationals are burnt to death in their shop and another shot in the head. 15 suspects are arrested and local business leaders are suspected to be involved.
Jul	2010	Gauteng	Mamelodi East	A 'xenophobic attack' case is opened. No arrests.*
Jul	2010	Gauteng	Rabie Ridge	One person is arrested for incitement to commit public violence against foreign nationals.*
Jul	2010	Gauteng	Mabopane	Police arrest one person for intimidation relating to threats against foreign nationals.*
Jul	2010	Gauteng	Tsakane	Five cases of possession of suspected stolen property are opened and 23 suspects are arrested in relation to looting of foreign businesses.*
Jul	2010	Gauteng	Reiger Park	Eight people are arrested in connection with malicious damage to the property of foreign nationals.*
Jul	2010	Gauteng	Mamelodi	Four people are arrested in connection with the robbery of a foreign-owned business.*

Appendix 2: Profile of participants

Pseudonym	Age	Gender	Education level	Residence permit	Occupation
Arkiso	38	Male	Completed high school	Asylum seeker	Self employed
Beyene	46	Male	College diploma	Refugee status	Self employed
Getcho	30	Male	College diploma	Refugee Status	Runs his own clothing shop
Abebe	42	Male	Completed high school	Refugee status	Pastor of a church
Mare	34	Male	Grade 11	Asylum seeker	Hawker
Tareke	29	Male	College diploma	Refugee status	Runs his own tuck-shop
Tesfaye	33	Male	Grade 11	Asylum seeker	Self employed
Chefamo	27	Male	Completed high school	Refugee status	Owens and runs internet café and clothing shop
Rahel	29	Female	Completed high school	Refugee status	Co-owns a shop with her husband
Addis	25	Male	Technical high school diploma	Asylum Seeker	Hawker
Tigist	26	Female	Completed high school	Asylum seeker	Runs her own restaurant
Debebe	32	Male	Grade 10	Refugee status	Hawker
Vanessa	24	Female	University degree	South African citizen	Legal Aid attorney

Miriam	26	Female	University degree	South African Citizen	Legal Aid attorney
Thabo	25	Male	University degree	South African Citizen	Public prosecutor
Simon	52	Male	University degree	South African citizen	Public Prosecutor
Sarah	40	Female	University degree	South African citizen	Magistrate
Calvin	48	Male	University degree	South African citizen	Magistrate
Jabulani	35	Male	Police academy	South African citizen	Police officer
Fikile	38	Female	Police academy	South African citizen	Police officer

Appendix 3: Interview Schedule

Basic profile

Gender:

Age:

Highest education achieved:

Residence status:

Occupation:

Interview guide for magistrates

1. What provisions are in place in making judicial services accessible to foreign nationals?
What do you think of the judicial services offered to non-South African citizens?
2. What do you think are the roles of the judiciary system in terms of prosecuting perpetrators of xenophobia?
3. What do you believe are the challenges that continue to confront magistrates' courts in successfully prosecuting criminals in general, and people specifically charged with xenophobic violence?
4. Did you as a magistrate see any difference in the length of time of prosecution between xenophobia cases from other cases?
5. What measures are taken to protect witnesses?
6. How were witnesses in xenophobia cases protected?
7. What is your understanding of the South African Immigration Act of 2002? What is your view on South African Refugee Act of 1998?

Interview guide for prosecutors

1. What do you think of the judicial services offered to non-South African citizens?
2. Where were you based in May 2008?
3. How long have you worked as a prosecutor?
4. What do you believe are the challenges you face in prosecuting criminals in general and people specifically charged with xenophobic violence?

5. Have you ever dealt with xenophobia cases? If no, do you know any colleague who had a case? Do you feel there is any difference in the length of time of prosecution between xenophobia cases from others?
6. How often have you used plea bargain in your cases? Do you feel it could also be used for xenophobia cases? Please explain.
7. Have you ever encountered a scenario where case dockets get lost? If yes, what do you think is the reason?
8. Are you familiar with the law making powers of court under section 8(3) (a) and 39(2) of the constitution? In what situations have you urged courts to use this?
9. What do you think of xenophobic violence in South Africa?
10. Are you aware that witnesses may be afraid to come and testify xenophobia cases?
11. What measures are taken to protect witnesses?
12. How were witnesses in xenophobia cases protected?
13. What is your understanding of the relationships between vigilante groups, community policing forum and South African Police service?
14. What is your understanding of the South African Immigration Act of 2002? What is your view on South African Refugee Act of 1998?

Interview guide for police officers

1. What do you think of the judicial services offered to non-South African citizens?
2. Where were you based in May 2008?
3. How long have you worked as a police officer?
4. What do you believe are the challenges you face in arresting criminals in general and people specifically charged with xenophobic violence?
5. Have you ever dealt with xenophobia cases? If no, do you know any colleague who had a case? Do you feel there is any difference in the length of time of prosecution between xenophobia cases from others?
6. How do you take statements from those people who can't speak English? Is there a way where foreigners who don't speak get assistance in the language they understand to give their statement? Please explain.

7. Have you ever encountered a scenario where case dockets get lost? If yes, what do you think is the reason?
8. What was the usual crime recorded in your station? What do you usually do to ensure effective outcome in the cases you investigate?
9. Are you aware that witnesses may be afraid to come and testify xenophobia cases?
10. What measures are taken to protect witnesses?
11. How were witnesses in xenophobia cases protected?
12. What is your understanding of the relationships between vigilante groups, community policing forum and National Prosecuting Authority?
13. Did the Community Police Forum and Vigilante group assist in arresting suspected criminals in general and perpetrators of xenophobic violence in particular?

Interview guide for Legal Aid attorneys

1. What do you think of the judicial services offered to non-South African citizens?
2. Where were you based in May 2008?
3. How long have you worked as a legal aid attorney?
4. What do you believe are the challenges you face in representing accused clients in general and people specifically charged with xenophobic violence?
5. Have you ever dealt with xenophobia cases? If no, do you know any colleague who had a case? Do you feel there is any difference in the length of time of prosecution between xenophobia cases from others?
6. Do you feel that there is adequate foreign language service to your clients?
7. What is your understanding of the South African Immigration Act of 2002? What is your view on South African Refugee Act of 1998?

Interview guide for Ethiopian Immigrants

1. What do you think of the judicial services offered to non-South African citizens?
2. What kind of residence permit do you hold(Refugee, asylum seeker, work permit etc)

3. Tell me about your experience when you first arrived in South Africa. How was your interaction with the locals?
4. How do you feel South Africans perceive foreigners? Do you think they have a different attitude towards you? How do you compare the hospitality you extend to foreigners in your home country to that of South Africans?
5. When you arrived in South Africa, did you interact with the police in any way? If you do, what was your impression? Do you think that the treatment you get from police would have been different if you were South African?
6. Do you feel you are welcome here in South Africa? Explain.
7. What is your experience in accessing justice system? (Courts, police etc)?
8. On a daily basis, do you interact with locals more or with your fellow country men? Why?
9. Did you have any negative experiences while living here in South Africa? If so, please explain.
10. Have you encountered any difficulty in integrating yourself in South Africa? Why do you think so?
11. Do you know the rights accorded in the constitution of South Africa to all people living in the country? Do you know your rights as an immigrant?
12. Have you ever been stopped by South African police? Have you ever been arrested? If yes, what was the reason and how were you treated?
13. Have your place of residence ever been visited by South African police? If yes, why did they come at your place?
14. Have you ever been in a situation where you bribed justice system personnel? If yes, explain.
15. Do you feel you are a target of crime? Why?
16. Do you intend to settle here in South Africa? What are your future plans? Do you suggest South Africa as a destination for other fellow Ethiopians planning to leave their country? Why?

Appendix 4: Informed Consent form

My name is Theodros Haile. I am a Masters student at the School of Development Studies, University of KwaZulu Natal, Howard College Campus, Durban. I am conducting a research that seeks to understand the perception and attitudes of judicial system personnel on the services they render and the experiences of Ethiopian asylum seekers and refugees in the greater New Castle area, South Africa. This study is mainly for academic purpose.

This research is supervised by Ms. Kerry Verimaak at the School of Development Studies, University of KwaZulu Natal, Howard College Campus, Durban.

Thank you for agreeing to take part in the study. Please note that participation in this study is voluntary and you are free not to answer any question you don't feel comfortable with or stop the interview at any time.

The information that you give and your identity will be kept strictly confidential. The interview will approximately take 30 -35 minutes and will be recorded for subsequent transcription and analysis.

Should you have any questions or concerns, my contact details are:

School of Development studies, University of KwaZulu Natal, Durban 4041, South Africa.

E-mail: 202526825@ukzn.ac.za

Would you like to continue? Yes/No

If yes, the following declaration will be signed by participant.

Declaration:

I..... (Full names of participant) hereby confirm that I understand the contents of this document and the nature of the research project, and I consent to participating in the research project.

I understand that I am at liberty to withdraw from the project at any time, should I so desire.

SIGNATURE OF PARTICIPANT

DATE

.....
.....