



DIMINISHING THE POWER OF DISCRIMINATION

International Day for the Elimination of Racial Discrimination

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The killing of 69 unarmed people in Sharpeville, South Africa, protesting apartheid pass laws on 21 March 1960, stirred the conscience of the world and saw the United Nations General Assembly adopt a Resolution to declare the day International Day for the Elimination of Racial Discrimination in 1966. 'Sharpeville Day' also became the origin for the post-1994 government of South Africa's Human Rights Day, declared a public holiday.

While definitions of racism and racial discrimination are varied, at the heart of the matter is prejudice that is embedded in race, colour, ethnicity and often the combination of these. The UN, in its *International Convention on All Forms of Racial Discrimination* (1965), defines it thus, "the term 'racial discrimination' shall mean any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin that has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, social, cultural or any other field of public life".

South Africans are all too familiar with legislated state-driven forms of racism, encapsulated in the system of apartheid. Its demise and the adoption of equal citizenship and participation in governance by all for all, marked a global turning point and a sense of optimism. The prescient words of former president Nelson Mandela at a time of political and social fragility in 1994 reinforced all that was good in human nature and possible despite a wretched past when he said, "Our human compassion binds us the one to the other - not in pity or patronisingly, but as human beings who have learnt how to turn our common suffering into hope for the future".

While many in South Africa understand the pain and hurt that apartheid vested on millions over generations, the high road was sought during the process of negotiations to understand, prosecute as necessary but to aver from redoing a history of racial discrimination. This by no means resulted in racial nirvana. Incidents of racial profiling, discrimination and abusive utterances continue to befall the country. However, a strong majority view continues to assert the constitutional imperative, so elegantly captured in the Preamble of the Constitution, to:

"Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;" AND
"Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law".

That our compassion, our acceptance of diversity and tolerance, is tested in big and small ways at present is a sad indictment on humanity and it is opportune that the theme for the International Day for the Elimination of Racial Discrimination in 2017 is **Racial profiling and**



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incitement to hatred, including in the context of migration. The pain of “othering” based on race, class, creed, ethnicity and sexual orientation amongst others remains an aching wound that, if left unchallenged, is bound to consume.

We have come a long way in South Africa in building bridges of respect for our common humanity but much more effort is required in the home, in the workplace, in public spaces, at universities and schools to realise Nelson Mandela’s dream that “today we are a nation at peace with itself, united in our diversity, not only proclaiming but living out the contention that South Africa belongs to all who live in it”.

This dream of peace, respect, unity in diversity and South Africa’s place in the global community of nations will be seriously harmed if the current government succeeds in its attempt to withdraw as a state party to the Rome Statute and revoke its membership of the International Criminal Court (ICC). This attempt to withdraw from the ICC was swiftly overturned by a full bench of the Pretoria High Court which found that the Cabinet’s decision to deliver notice to withdraw was both unconstitutional and invalid for lack of consultation and approval from Parliament. The recent decision to withdraw the ICC Repeal Bill is to be welcomed and it is necessary to maintain vigilance to ensure that South Africa maintains its commitment to remain within the global community of human rights advocates.

The moral and ethical issues for consideration by the Executive however, are those of whether South Africa is prepared, in defence of President Omar al-Bashir of Sudan, to withdraw from the *Rome Statute of the International Criminal Court*. Ample evidence gathered by the ICC has proven that President al-Bashir has committed some or all of the four categories of crimes established under the Rome Statute, including genocide, crimes against humanity, war crimes and the crime of aggression, hence the warrant for his arrest. It was therefore incumbent on South Africa, as a signatory to the Rome Statute and in terms of its own domestic law, the *International Criminal Court Act*, to arrest President al-Bashir. That South Africa, mindful of its own past, would defend President al-Bashir, defies reason.

As the country and world deliberate the significance of the International Day for the Elimination of Racial Discrimination, it would behove us all to remember again and again that racism and discrimination are the antithesis of peace, unity and social cohesion.