



ACCESS TO JUSTICE



south african
human
rights
commission



BACKGROUND

The South African Human Rights Commission (SAHRC) is an independent institution established in terms of Chapter 9 of the Constitution of the Republic of South Africa, (the Constitution) to support constitutional democracy. Its mandate is to promote, protect and monitor the observance of human rights in the Republic. In line with its promotional mandate, the SAHRC must educate and raise awareness to promote respect for human rights and a culture of human rights. The SAHRC has developed this information sheet for the general public to provide basic information on access to justice.

WHAT DOES ACCESS TO JUSTICE MEAN?



South Africa is a **constitutional democracy**, which means that it is a country which observes human rights principles and is governed by the rule of law. The Constitution is the highest law of the Republic and it sets out the rights and duties of everyone in the country, including the responsibilities of government. Chapter 2 of the Constitution contains the **27 rights** that are collectively called the **Bill of Rights**. Everyone in the country is entitled to the rights in the Bill of Rights by virtue of being human and are born with these rights. The rights are inalienable, and they cannot be arbitrarily taken away, although they can be limited in certain instances. To ensure that rights are protected, section 34 of the Constitution creates a right to have threats to rights, violations of rights and disputes determined fairly before independent bodies such as courts.

Section 34 of the Constitution provides that:



Everyone has a right to have any dispute that can be resolved by the application of the law decided in a fair public hearing before a court or where appropriate another independent and impartial tribunal or forum.



This means people have the right to have a matter heard before a court or an appropriate body, in public and on any matter or issue. No one is above the law, regardless of their standing in society. If you have been wronged by someone or are aggrieved, you are not allowed to take the law into your own hands. Instead, the Constitution provides a way of dealing with any dispute that may be encountered between individuals or between people and the government or other institutions like private companies. The Constitution seeks to promote fairness, restoration, and social cohesion through ensuring that legal disputes are resolved in line with the law by empowering courts and independent tribunals to hear and determine disputes.



WHAT IS THE STATE'S RESPONSIBILITY FOR ACCESS TO JUSTICE?

The State has the primary responsibility to ensure that there is law and order in the country. The State is divided into three arms, the Executive, the Legislature and the Judiciary.

The Executive

The executive authority of the Republic is vested in the President, who appoints members of the Executive who make up the Cabinet. The members of Cabinet are those officials commonly referred to as Ministers. The Executive is responsible for, among other roles, initiating, developing and implementing national legislation and policies. In carrying out its duties the Executive is exercising public power and must do so in line with the Constitution. This means the Executive has a responsibility to promote and protect basic human rights.

The Legislature

The Legislature is responsible for making law, through the passing of national legislation. The Legislatures consist of the Parliament of the Republic of South Africa, which has its seat in Cape Town; Provincial Legislatures have seats in the capitals of each of the 9 provinces, and Municipal Councils in municipalities across the country. The Parliament of the Republic is made up of the National Assembly, which is presided over by the Speaker of the National Assembly, and the National Council of Provinces (NCOP) which is presided over by the Chairperson of the NCOP. Provincial Legislatures are responsible for, among other things passing legislation in their respective provinces and are presided over by Speakers of the Provincial Legislatures. Municipal Councils are responsible for passing municipal by-laws and are presided over by Municipal Council Speakers. All of these tiers of the State must protect and promote basic rights in all of their actions.

The Judiciary

The judicial arm of the State is vested in the courts, which are independent and only subject to the Constitution and the law. The courts are responsible for adjudicating disputes and they do so by applying the law impartially, without fear or favour. The Courts are presided over by Judges and Magistrates. The head of the Judiciary is the Chief Justice who is also the judicial head of the Constitutional Court, which is the highest court in the land.

HOW CAN I ACCESS JUSTICE?

A human rights violation is defined as an abuse or violation of any of the rights found in the Constitution. If human rights are violated, the courts or other bodies with the power to make determinations about such violations may be approached for assistance.

South African Police Services

The South African Police Service (SAPS) is responsible for preventing crime and protecting basic rights. The SAPS does this by combating and investigating crimes, maintaining public order, protecting all people in the country, their property, and upholding and enforcing the law. All crimes must be reported to the SAPS for investigation and possible prosecution. According to the SAPS there are 1 138 police stations located throughout the 9 provinces and serviced by 150 950 officers.¹



To report a crime contact the SAPS on their local numbers or through the national toll free number 10111.

What to do if a criminal offence is committed by a member of the SAPS?

Complaints related to the conduct of members of the SAPS should be reported to the relevant Station Commander or Head of the Police Station where such a member is employed. If no assistance is provided, such a complaint should be

escalated to the Independent Police Investigative Directorate (IPID). IPID is an independent oversight institution mandated to investigate the conduct of members of the SAPS, so that the SAPS itself does not violate basic rights. Where law suits are brought against the police, legal practitioners should be approached to assist particularly in respect of civil claims against the SAPS.



¹ www.saps.gov.za accessed on 7 August 2018



Complaints against members of the SAPS can be directed to:
The Independent Police Investigative Directorate
Private Bag X491, Pretoria, 0001
Tel: 012 399 0000
Website: www.ipid.gov.za



WHAT IS THE COURT STRUCTURE LIKE



The Constitution provides that everyone has a right to have any dispute referred to court for adjudication. This means that anyone can bring any dispute before any court for adjudication, provided that the rules of the relevant court are followed. Courts are open to the public but court rules must be observed. South African courts are as follows:

The Constitutional Court

The Constitutional Court is the highest court in South Africa. It can hear any matter in the interests of justice, and can declare certain laws or parts of laws invalid. The court makes its decisions by considering the interpretation of the Constitution. Its orders are intended to promote and protect the Constitution and the rights in the Bill of Rights. The Constitutional Court has 11 justices and is situated in Braamfontein, Gauteng.

The Supreme Court of Appeal

The Supreme Court of Appeal (SCA) which was previously known as the Appellate Division, is the highest court in respect of all other matters except those that falls within the jurisdiction of the Constitutional Court. Where parties are unhappy with the decision of a lower court, they will appeal to a high court. If one remains unhappy with the outcome of a decision on appeal before the High Court, the decision may be taken to the SCA on appeal. The SCA is situated in Bloemfontein, Free State.

The High Court

The High Court deals with cases beyond the reach of the Magistrates Court or when one is challenging a decision of a Magistrates Court, which means appealing a case. There are 14 High Courts in the country, with at least one High Court in each province. The High Court usually hears serious criminal cases or civil cases involving an amount of more than R100 000. There are currently 14 provincial divisions of the High Courts situated in the various provinces.

Magistrates Court

Magistrates Courts are lower courts that mainly deal with less serious criminal cases and civil cases of amounts less than R100 000. Magistrates' courts are divided into District and Regional courts. There are approximately 550 Magistrates Courts in the country to ensure most people have easy access to these courts.

Small Claims Court

Small Claims Courts have jurisdiction to hear any civil matter involving less than R15 000 (unless both the person suing and the person being sued agree to limit the claim to less than R15 000). They have been created to allow matters/disputes to be determined quickly and easily. The Presiding Officer is a Commissioner and lawyers are not needed in the Small Claims Court. Small Claims Courts are located in most Magistrates Courts, therefore one must contact the nearest Magistrates Court for information regarding the Small Claims Court.

Equality Court

Equality Courts have been set up to assist members of the public to seek relief if they are subjected to unfair discrimination, hate speech or harassment. These courts are meant to make it easy for anyone to bring their cases to court and for the issue to be resolved and finalised quickly. Court officials are trained to provide assistance to members of the public who wish to use the Equality Court. Legal representatives are not always needed in the Equality Courts as the procedures in these courts have been simplified to support access to justice. The SAHRC assists members of the public to argue matters before the Equality Court. Every Magistrates Court is as an Equality Court, therefore one can contact the SAHRC or the nearest Magistrates Court.

WHO CAN ASSIST IN BRINGING MATTERS BEFORE THE COURT



The National Prosecuting Authority

The National Prosecuting Authority (NPA) is an independent, impartial body that is mandated to institute and conduct criminal proceedings on behalf of the State. Prosecutors are commonly known as public defenders and they prosecute accused persons in criminal cases on behalf of the State and assist in offering support to victims of crime and to witnesses.

More information on the work of the NPA can be obtained by contacting prosecutors that are stationed in all the courts throughout the country, or through the following contact details:

Private Bag X752, Pretoria, 0001

Tel: 012 845 600

Website: www.npa.gov.za

Legal Practitioners / Lawyers

Legal practitioners/ lawyers can assist in bringing disputes before court for adjudication. This means that in order to access justice anyone is allowed to approach any legal practitioner for assistance, however legal practitioners charge for their services and have a right to refuse instructions from potential clients. It is important to get as much information as possible on how much it would cost to get legal assistance before giving a mandate to a private legal practitioner.

The Law Society of South Africa is a national body that speaks on behalf of the attorneys' profession. Any complaint relating to the conduct of a lawyer such as overcharging of fees or where you are not satisfied with the level of service must be directed to the Law Society which can be contacted on the following details:

PO Box 36626, Menlo Park, 0102

Tel: 012 366 8800

Website: www.lssa.org.za

WHAT HAPPENS IF YOU DO NOT HAVE THE NECESSARY FUNDS TO APPOINT A PRIVATE LAWYER?



Legal Aid South Africa (Legal Aid SA) is a state funded institution that provides free legal services and assistance to those who cannot afford private lawyers. Anyone who requires the services of a lawyer but does not have the necessary funds can approach Legal Aid SA for assistance. Legal Aid SA uses a means test to determine whether one qualifies for assistance. Legal Aid SA currently has 134 offices which include regional offices, justice centres and satellite offices serviced by 2 751 officials.² In addition to their own officials, Legal Aid SA can make use of other lawyers to assist members of the public free of charge.

For more information on the services of Legal Aid SA, contact:



Tel: 0800 110 110

Website: www.legal-aid.co.za

Universities throughout the country have **Law Clinics** that are similar to private law firms and provide legal advice and services to members of the community who cannot afford private lawyers for free. Qualified lawyers employed by law clinics supervise law students in providing legal services. However, these clinics have certain criteria which assists in the determination of the matters with which they are able to take on. More information on law clinics is available under the Faculty of Law on each of the universities' websites.

² Legal Aid South Africa Integrated Annual Report 2016/2017

WHAT ARE THE OTHER MECHANISMS TO ACCESS JUSTICE?

The Constitution in Chapter 9 provides for a number of institutions to support constitutional democracy and facilitate access to justice, such as:



Public Protector South Africa

The office of the Public Protector investigates conduct in state affairs or in the public administration in any sphere of government that is alleged or suspected to be improper. This includes maladministration, abuse of power, unfair, discourteous or improper conduct, undue delay, dishonesty or improper dealing with respect to public money, improper enrichment, receipt of improper advantage and prejudice suffered by the complainant. The Public Protector can also investigate corruption, violations of executive members' ethics code and conduct in government at any level, including national, provincial and local government and state owned entities.

The Public Protector has the power to make findings, issue reports and take appropriate remedial action³. If the Public Protector finds that the complaint is justified he/she will do all that is possible to find a solution to the problem. Anyone can complain to the office of the Public Protector, whose services are for free.

For more information or to lodge a complaint with the Public Protector, contact:

175 Lunnon Street, Hillcrest Office Park, Hatfield, Pretoria

Private Bag X677, Pretoria, 0001

Tel: 012 366 7000

Toll Free No: 0800 11 20 40

Website: www.pprotect.org

³ *Economic Freedom Front and Democratic Alliance and Others v Speaker of the National Assembly and Others* [2016]ZACC 11



Commission for Gender Equality

The Commission for Gender Equality (CGE) promotes respect for gender equality and the protection, development and attainment of gender equality. The CGE investigates gender related complaints including violations and challenges, practices and customs that discriminate against people because of their gender.

For more information or to lodge a complaint with the Commission for Gender Equality, contact:

2 Kotze Street, Women's Jail, East Wing, Constitutional Hill, Braamfontein

Tel: 011 403 7182

Website: www.cge.org.za

Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL)

The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL) promotes respect for the rights of cultural, religious and linguistic communities. A person belonging to a cultural, religious or linguistic community may lodge a complaint with the Commission when that person or community believes that their rights are threatened or that they are denied the right to enjoy and practice their culture and religion and use their language or denied the right to freely form, join and maintain cultural, religious and linguistic associations.



For more information on the CRL Commission, contact:

Forum 4, Braampark, Braamfontein, Johannesburg

P O Box 90000, Houghton, 2041

Tel: 011 358 9100

Website: www.crlcommission.org.za



South African Human Rights Commission (SAHRC)

The SAHRC is the national human rights institution in South Africa as designated by the Constitution. The SAHRC engages directly with members of the public to raise awareness of rights through outreach interventions, publication of educational material and disseminating information to enable the public to assert and enforce their rights. The SAHRC deals with cases of human rights violations at no cost to any applicant or complainant.

A complaint may be lodged at any of the provincial offices of the SAHRC where the alleged violation of a fundamental right took place. A complaint can be lodged in person, by telephone, in writing or by completing the online complaint form. Where the SAHRC is unable to deal with a complaint, it will explain why. If after preliminary investigation, the SAHRC is of the opinion that there is substance in any complaint, it will in so far as it is able to do so, assist the complainant and other persons adversely affected thereby, to secure redress.

The SAHRC has produced and publicised its Complaints Handling Procedures, which detail the procedure to be followed in conducting an investigation of any alleged violation of human rights. Further, the SAHRC has adopted special measures and guidelines to cater for complaints specific to the violation of children's rights, through the Child Friendly Complaints Handling Procedure. Both procedures are available on the SAHRC website and complaints may be lodged through the website as well.



Other entities

Apart from the courts and Chapter 9 bodies, there are other statutory bodies that address specific complaints from the public regarding violation of a particular right. Examples of these include, but are not limited to, the Public Services Commission that is responsible for the maintenance of effective and efficient public administration and a high standard of professional ethics in the public service; as well as the Commission for Conciliation, Mediation and Arbitration and labour courts that deal with disputes arising in the labour environment.

There are also a number of non-governmental, faith or community based organisations and legal advice offices with a national presence that also facilitate and serve as avenues for accessing justice. Examples of such organisations include, but are not limited to, Black Sash, Lawyers for Human Rights, Legal Resources Centre, SECTION 27 and others. If you feel that any of your rights in the Bill of Rights have been violated, you can visit their offices.

The Bill of Rights

Equality:
You cannot be discriminated against for affirmative action and fair discrimination are allowed.

Human Dignity:
Your dignity must be respected and protected.

Life:
You have the right to life.

Freedom and security of the person:
You cannot be detained without trial, tortured or punished cruelly. Domestic violence is not allowed.

Slavery, servitude and forced labour:
Slavery and forced labour are not allowed.

Privacy:
You cannot be searched or have your home or possessions unlawfully searched.

Freedom of religion, belief and opinion:
You can believe and think whatever you want and can follow the religion of your choice.

Freedom of expression:
All people (including the press) can say whatever they want.

Assembly, demonstration, picket and petition:
You can hold a demonstration, picket and protest if you wish. But you must do this peacefully.

Freedom of association:
You can join organisations and/or associate with whoever you want to.

Property:
Your property can only be taken away from you if the law says it is allowed.

Housing:
The government must make sure that you have access to proper housing.

Health care, food, water and social security:
The government must make sure you have access to long and better health care and social security.

Children:
Children under the age of 18 have special rights. Ask the right to be protected from maltreatment, neglect and abuse.

Education:
You have the right to basic education, including post-basic education, in your own language (if it is possible).

Language and culture:
Cultural, religious and linguistic communities.
Communities can enjoy their own culture, practice their own religion, and use their own language.

Access to information:
You have the right to obtain any information held by the State, and any information held by another person that is required for the exercise of your rights.

Just administrative action:
Actions by the government must be procedurally fair.

Access to courts:
You can have a legal dispute settled by a court or a similar structure.



Know your rights, Accept your Responsibilities

Political rights:
You can support the political party of your choice. If you are 18 years and at least 18 years old, you can vote.

Citizenship:
Your citizenship cannot be taken away from you.

Freedom of movement and residence:
You can go and live anywhere in South Africa.

Freedom of trade, occupation and profession:
You can do whatever work you choose.

Labour relations:
You may join a trade union of your choice and take industrial action like going on strike.

Environment:
You have the right to a healthy environment.

Arrested, detained and accused persons:
You can protect people who have been arrested, imprisoned or accused. For example, they have a right to a fair trial.

NOTE:
All these rights can be limited if it would be fair to do so. For more information on your rights, see Chapter 2 of the Constitution.

We are the South African Human Rights Commission and we are here to inform, advise and help protect your rights.

Head Office - Sandton: Tel: 011 635 6300 Fax: 011 635 6312 From 9am - 5pm weekdays (9am - 5pm)
 Free State: Tel: 053 951 1700 Fax: 053 951 1701 PO Box 646, Makhanda 6001
 Limpopo: Tlokweng: Tel: 015 381 390000 Fax: 015 381 3899 PO Box 801, Mphahlele 0905
 Northern Cape: Tel: 053 6333377 Fax: 053 633 6300 PO Box 1063, Oudtshoorn 6700
 Western Cape: Tel: 021 885 8888 Fax: 021 885 8889 PO Box 1063, Oudtshoorn 6700

0800 111 000 www.uhrc.org.za e-mail: info@uhrc.org.za

Building a culture of Human Rights



English

PROVINCIAL OFFICES

Eastern Cape

Address: 3-33 Phillip Frame Road, Waverly Park, Phase 4B, Chiselhurst, East London

Tel: 043 722 7828/21/25 | Fax: 043 722 7830

Provincial Manager

Mr Abongile Sipondo

Contact: Yolokazi Mvovo

E-mail: ymvovo@sahrc.org.za

Gauteng Office

2nd Floor, Braampark Forum 3, 33 Hoofd Street, Braamfontein

Tel: 011 877 3750 | Fax 011 403 0668

Provincial Manager

Mr Buang Jones

Contact: Nthabiseng Kwaza

E-mail: nvkwaza@sahrc.org.za

Free State

18 Keller Street, Bloemfontein

Tel: 051 447 1130 | Fax: 051 447 1128

Provincial Manager

Mr Thabang Kheswa

Contact: Alinah Khompeli

E-mail: akhompeli@sahrc.org.za

KwaZulu-Natal

First Floor, 136 Margaret Mncadi, Durban

Tel: 031 304 7323/4/5 | Fax: 031 304 7323

Provincial Manager

Mr Lloyd Lotz

Contact: Kathleen Boyce

E-mail: kboyce@sahrc.org.za

Limpopo

29A Biccard Street, Polokwane

Tel: 015 291 3500 | Fax: 015 291 3505

Provincial Manager

Mr Victor Mavhidula

Contact: Mahlatse Ngobeni

E-mail: mngobeni@sahrc.org.za

Mpumalanga

First Floor, Allied Building, 34 Brown Street, Nelspruit

Tel: 013 752 8292 | Fax: 013 752 6890

Provincial Manager

Mr Eric Mokonyama

Contact: Carol Ngwenyama

E-mail: cngwenyama@sahrc.org.za

Northern Cape

45 Mark and Scot Road, Ancorley Building, Upington

Tel: 054 332 3993/4 | Fax: 054 332 7750

Provincial Manager

Ms Chantelle Williams

Contact: Zukiswa Louw

E-mail: zlouw@sahrc.org.za

North West

25 Heystek Street, Rustenburg

Tel: 014 592 0694 | Fax: 014 594 1069

Acting Provincial Manager

Mr Osmond Mngomezulu

Contact: Poppy Mochadibane

E-mail: pmochadibane@sahrc.org.za

Western Cape

7th Floor ABSA building, 132 Adderley Street, Cape Town

Tel: 021 426 2277 | Fax: 021 426 2875

Provincial Manager

Contact: Shafeeqah Salie

E-mail: ssalie@sahrc.org.za

How to contact the SAHRC:

Forum 3, Braampark, Braamfontein, Johannesburg

Tel: 011 877 3600

Website: www.sahrc.org.za

E-mail: info@sahrc.org.za / complaints@sahrc.org.za

Twitter: @SAHRCommission

Facebook: SA Human Rights Commission

