



south african  
**human  
rights**  
commission



# EQUALITY TOOLKIT

## 2020/2021



The background of the page features a large, stylized graphic in a lighter shade of red. It depicts several hands reaching upwards, cupping a large, flame-like shape that resembles a torch or a flame. The overall aesthetic is one of hope, support, and transformation.

## **Vision**

*Transforming society. Securing rights. Restoring dignity.*

## **Mission**

*The Commission as the independent national human rights institution is created to support constitutional democracy through promoting, protecting and monitoring the attainment of everyone's human rights in South Africa without fear, favour or prejudice.*

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## ABBREVIATIONS AND ACRONYMS

<b>ACHPR:</b>	African Charter on Human and People's Rights
<b>CCMA:</b>	Commission for Conciliation, Mediation and Arbitration
<b>CEDAW:</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CGE:</b>	Commission for Gender Equality
<b>CRL:</b>	Commission for the Promotion and Protection of Rights of Cultural Religious and Linguistic Communities
<b>ERC:</b>	Equality Review Committee
<b>CERD:</b>	International Convention on the Elimination of All Forms of Racial Discrimination
<b>NAP:</b>	National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance
<b>NDP:</b>	National Development Plan
<b>NHRI:</b>	National Human Rights Institution
<b>NPC:</b>	National Planning Commission
<b>PEPUDA:</b>	Promotion of Equality and the Prevention of Unfair Discrimination Act
<b>PPSA:</b>	Public Protector South Africa
<b>SAHRC:</b>	South African Human Rights Commission
<b>SAPS:</b>	South African Police Service
<b>UDHR:</b>	Universal Declaration of Human Rights
<b>UN:</b>	United Nations



# PART A

## INTRODUCTION

### 1. INTRODUCTION



#### 1.1. Purpose of the Toolkit

The purpose of this Toolkit is to provide a generic resource which may be referenced by stakeholders in efforts to deepen and strengthen levels of awareness about the right to equality in the country. The South African Human Rights Commission (the SAHRC or the Commission) runs awareness programs aimed at communities and the general public. This Toolkit is aimed at community based organisations, community leaders, representatives or activists. Given the prevalence of violations of the right to equality, such stakeholders can benefit from an easy to access resource that is freely available for their own use.

The Toolkit contains a range of information which allows stakeholders to readily select what is necessary for a particular intervention and can also be used by stakeholders to orientate their own teams. The Toolkit will serve a similar function within the SAHRC by providing key messages on equality in the conduct of advocacy, outreach and communication efforts; and also provide basic orientation to guide on-boarding staff on equality as a key pillar of its work.

The Toolkit contains basic information on equality, includes summaries of the legal and policy framework, international and regional

equality norms and standards, reference to key jurisprudence and lists key reference materials. This basic information has been consolidated with a view that it may be adapted to suit the needs of a wide range of audiences as well as informing the Commission's own interventions in promoting awareness and respect for the right to equality.

The Toolkit also sets out the structures that can help with equality related violations, with a specific focus on Equality Courts as well as the role of the SAHRC and other entities in promoting and protecting equality rights.



#### 1.2. Mandate of the South African Human Rights Commission

**The SAHRC is established by the Constitution of the Republic of South Africa, 1996, as an independent state institution supporting constitutional democracy. Its mandate is to:**

- ✓ Promote respect for human rights and a culture of human rights;
- ✓ Protect the development and attainment of human rights; and
- ✓ Monitor and assess the observance of human rights.

The Constitution further vests in the SAHRC the power to investigate and report on the observance of human rights; take steps to secure appropriate redress where human rights have been violated; carry out research and educate on human rights.

The SAHRC is also responsible for discharging responsibilities as mandated by the following national legislation:

- ✓ The South African Human Rights Commission Act 40 of 2013;
- ✓ The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000; (PEPUDA);
- ✓ The Promotion of Access to Information Act 2 of 2000 (PAIA); and
- ✓ The Promotion of Administrative Justice Act 3 of 2000 (PAJA).

**As a National Human Rights Institution (NHRI), the SAHRC adheres to the United Nations (UN) Principles Relating to the Status of National Human Rights Institutions (also referred to as the Paris Principles).** The Paris Principles serve to guide the nature and functioning of an NHRI and also emphasise the independent nature of NHRIs. The principles provide that national human rights institutions should:

- ✓ Monitor any situation of violation of human rights;
- ✓ Be able to advise the government, Parliament and any other competent body on specific violations;
- ✓ Educate and inform on issues of human rights; and
- ✓ Be able to use their quasi-judicial powers where these exist.



### 1.3. The right to equality as a central pillar of the SAHRC mandate

The right to equality is one of the SAHRC's strategic focus areas of work and informs a wide range of actions to promote, protect and monitor observance of the right to equality in the country. The SAHRC regularly receives complaints involving alleged violations to the right to equality; conducts investigations and issues investigative reports with findings and recommendations to seek redress for those whose human rights have been infringed. A number of equality related matters have also been the basis for litigation by the SAHRC. Further, the SAHRC conducts research on the right to equality and produces a series of reports documenting the extent to which unfair discrimination persists in South Africa. These reports and work of the SAHRC also form the basis of the interventions that the SAHRC makes with international and regional mechanisms to advance the right to equality. In the conduct of its work, the SAHRC may seek expert advice and recommendations on a range of matters such as those involving equality from Advisory Committees established in terms of Section 11 of the SAHRC Act 40 of 2013.

A continued strategic focus on equality by the SAHRC is informed by the persisting inequalities in the country. One manifestation of the prevalence of inequality is the inordinately high number of equality-related complaints lodged with the SAHRC. Both the SAHRC's 2016-2017 Trends Analysis Report and the 2017-2018 Equality Report noted that

**the highest category of complaints that the SAHRC receives were based on Section 9 of the Constitution and the Equality Act; with race, hate speech, social origin, sexual orientation and disability featuring amongst the highest categories of equality related complaints received.**

Apart from trends in complaints to the SAHRC, other sources of information which provide a gauge of equality related violations are drawn from observation of topical issues that are in the public domain and in the media; various research reports in terms of the extent, prevalence and intensity of human rights concerns or needs; observations from the SAHRC outreach and monitoring engagements and reports, as well as requests it receives from various stakeholders. Some useful resources for equality related information is provided at the end of the Toolkit.

The quest for substantive equality is not limited to South Africa. The SAHRC participates in international and regional information sharing initiatives and platforms to keep up with developments, collaborate and share best practices with other institutions to contribute to the development of legislation and policies on equality and non-discrimination. Further, it engages with a broad range of stakeholders including government departments, Chapter 9 institutions and civil society organisations; conducts education and information initiatives and communicates through print, broadcast, online and social media, to a broader public audience to raise awareness on issues pertaining to equality.

Despite these interventions the prevalence of equality related violations remains unacceptably high. Continued violations of the right to equality over the period of the SAHRC's existence since its inauguration on 2 October 1995, requires reflection about the levels of awareness of the right; whether awareness interventions are up to date, adequately responsive to needs, provide relevant information regarding the identification of violations and rights of recourse; and whether the available materials to address awareness meet their purpose.

The SAHRC is concerned that so many years since the dawn of democracy, human rights abuses and various forms of discrimination still persist. South Africa needs to recommit to its constitutional values of equality, freedom and dignity and transform rights into reality. The responsibility to raise awareness and stop persistent human rights violations lies not only with the State but with all sectors of society. The appreciation of human rights is extremely important to the well-being of all in society and requires both individual and collective efforts to be employed.





# PART B

## KEY SAHRC STATISTICS

### 2. KEY SAHRC STATISTICS



#### 2.1. Breakdown of equality related violations

The table below reflects the breakdown of the high prevalence of equality related violations:

EQUALITY	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019
Equality - Race	208	297	292	505	486	496	509
Equality - Disability	45	70	62	66	69	80	76
Equality - Sexual Orientation	14	22	17	26	24	38	50
Equality - Ethnic or Social Origin	39	55	35	47	27	30	31
Equality - Religion	17	34	36	22	22	29	35

Source: Annual Trends Analysis Report: 2017-2019 Disaggregated equality complaints per each financial year under review.



# PART C

## HISTORY AND CONTEXT

### 3. HISTORY AND CONTEXT



#### 3.1. Background to history of inequality, manifestations and prevalence

The SAHRC notes with concern that, despite the dawn of freedom and democracy, and notwithstanding the gains achieved thus far, considerable challenges remain in respect of the advancement of the right to equality for all. Amongst the challenges facing South Africa is the fulfilment of the constitutional promises to improve the quality of life and free the potential of all people. In addition, South Africa's democracy continues to be undermined by frequent manifestations of social ills of racism, racial discrimination, sexism, xenophobia, and homophobia, hate speech, gender based violence and other forms of prejudice.

**South Africa's inequality is rooted in political exclusion which took segregative and racial forms and was sustained by repression of political and social organisation. South Africa's apartheid era marked years of discrimination and oppression, through the pursuance of segregation policies and hierarchy of races.**

This resulted in systemic and structural inequality in resource allocation and the deprivation of the majority of South African society of the basic necessities of life and violations to basic rights.

Apartheid oppression was a collection of laws which were harnessed to achieve unjust economic and political ends. Examples include the 1913 Native Land Act which restricted land ownership for Africans to designated areas; the 1950 Group Areas Act restricted property ownership rights to designated areas for Africans, Coloureds and Indians; and the migrant labour system restricted the movement of Africans into urban areas. These restrictions in turn contributed to severe housing shortages in the cities, resulted in lack of guarantees for asset acquisition or ownership of homes, increased the insecurity of urban and workplace tenure, shaped the gender balance within rural households and restricted the participation of blacks in the labour market as well as the number, nature and location of businesses by blacks. Despite the unconstitutionality of such laws under the Constitution, patterns of systemic discrimination and socio-economic disparity continue to influence and impede the attainment of substantive equality in South Africa today. Thus the abolition of the legacy of apartheid will require extensive commitments over a period of time for the translation of the vision of national unity and reconciliation into reality.



According to the International Monetary Fund, South Africa to date remains one of the most unequal countries in the world on account of skewed income distribution, unequal access to opportunities and rising unemployment; which contributes to the persistence of inequality<sup>1</sup>. Some government efforts to reduce inequality have focused on higher social spending and affirmative action (known internationally as “special measures”) in attempts amongst others, to diversify wealth ownership and promote entrepreneurship among the previously marginalized. The need for implementation of policies that are responsive to the growing disparity in access to opportunities and in support of marginalized groups through improved quality of education, health, and transportation is vital.



## History of inequality, manifestations and prevalence

<sup>1</sup> International Monetary Fund, Country Report No 20/33; 2020 (<https://www.imf.org/en/News/Articles/2020/01/29/na012820six-charts-on-south-africas-persistent-and-multi-faceted-inequality>)

# PART D

## LEGAL AND POLICY FRAMEWORK

### 4. LEGAL AND POLICY FRAMEWORK



#### 4.1. International framework

South Africa is party to international laws and agreements, which means that the country accepts and is bound by all the legal obligations and responsibilities that are imposed through these instruments. At the core of international human rights law is the entrenchment and protection of the right to equality and non-discrimination, which informs the entire international human rights system. The rights can therefore be identified in most international treaties, protocols, and conventions.

The atrocities of the Second World War of 1939-1945 and the inequities of colonialism forced the international community to recognise the necessity for international law to regulate the protection of the rights of individuals within states.<sup>2</sup> The formation of the United Nations (UN), made up of representatives from all the countries in the world signalled the need for a collective commitment to protect the rights of every human being.

This commitment by states resulted in the adoption of the **Universal Declaration of Human Rights (UDHR) in 1948**, which although not binding on states, committed all of the member states to strive to promote respect

for all the rights and freedoms contained in the document. The UDHR recognises that all human beings are born free and equal in dignity and rights; and is the first key global instrument providing for the universal protection of fundamental human rights and recognition of the inherent dignity, equality and inalienability of rights for all human beings.

In addition to the UDHR, **the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and the respective Optional Protocols<sup>3</sup>** have become a yardstick by which to measure the degree of respect for, and compliance with, international human rights standards. Both covenants oblige State parties to guarantee the rights to be exercised without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)<sup>4</sup> and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),<sup>5</sup>**

<sup>3</sup> Adopted by the UN General Assembly on 16 December 1966

<sup>4</sup> Adopted by the UN General Assembly on 21 December 1965

<sup>5</sup> Adopted by the UN General Assembly on 18 December 1979

<sup>2</sup> The Educator and the Constitution, SAHRC 2004



form part of core international instruments that entrench the principles of equality and dignity inherent in all human beings.

**The African Charter on Human and People's Rights (ACHPR)**<sup>6</sup>, is a regional instrument that prohibits unfair discrimination without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status. The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa—commonly referred to as the Maputo Protocol<sup>7</sup>—also guarantees comprehensive rights to women including the right to social and political equality and improved autonomy in reproductive health decisions.



#### 4.2. National framework

The founding provisions of the Constitution provide that South Africa is one sovereign, democratic state founded on the values of human dignity, the achievement of equality and the advancement of human rights and freedoms, non-racialism and non-sexism, supremacy of the Constitution and the rule of law. South Africa demonstrated its commitment to promote equality and regulate unfair discrimination through enactment of international instruments into domestic law.

A summary of the key domestic framework that regulates equality related matters is as follows:

<sup>6</sup> Adopted by the then Organisation of African Unity (now African Union) on 27 June 1981

<sup>7</sup> Adopted by the AU on 11 July 2003



#### 4.2.1. The Constitution of the Republic of South Africa

The adoption of the Constitution in 1996 represented a significant shift from racial-based policies to a constitutional democracy anchored by the Bill of Rights which recognizes human rights and freedoms, human dignity and equality as core principles and values. **The Constitution is the primary vehicle for substantive equality**, with the law and institutions supporting democracy serving as fundamental components for the transformation of South African society. The Constitution obliges the State to redress inequalities, tackle racial exclusion, and improve the quality of life for all, in order to advance an inclusive and socially just society based on democratic and social transformative values.

**The Constitution in Section 9 guarantees the right to equality before the law, equal protection and benefit of the law, imposes an obligation on the State to take positive measures to protect and advance groups disadvantaged by unfair discrimination and prohibits unfair discrimination by the state and private individuals. In addition, it prohibits unfair discrimination on the following listed grounds of race, colour, ethnic origin and social origin, gender, sex, sexual orientation, pregnancy, marital status, age, disability, religion, conscience, belief, culture, language and birth.**

Whilst Section 36 provides for the limitation of rights, such limitation is only acceptable if it is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.



#### 4.2.2. The Promotion of Equality and Prevention of Unfair Discrimination Act

**The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA/Equality Act), is the key primary legislation to prevent or prohibit unfair discrimination and promote the achievement of equality.**

PEPUDA aims to facilitate and discharge some important constitutional and international obligations, amongst others: “to give effect to the letter and spirit of the Constitution, in particular:

- ① The equal enjoyment of all rights and freedoms by every person;
- ① The promotion of equality;
- ① The values of non-racialism and non-sexism contained in section 1 of the Constitution;
- ① The prevention of unfair discrimination and protection of human dignity as contemplated in sections 9 and 10 of the Constitution;
- ① The prohibition of advocacy of hatred, based on race, ethnicity, gender or religion, that constitutes incitement to cause harm as contemplated in section 16(2)(c) of the Constitution and section 12 of this Act;
- ① To provide for measures to educate the public and raise public awareness on the importance of promoting equality and overcoming unfair discrimination, hate speech and harassment; and
- ① To provide remedies for victims of unfair discrimination, hate speech and harassment and persons whose right to equality has been infringed.”



#### 4.2.3. Equality Review Committee

Section 32 of PEPUDA provides for the establishment of the Equality Review Committee, and section 33 provides for the powers, functions and term of office of such committee. The Equality Review Committee is required to advise the Minister of Justice and Constitutional Development about the operation of this Act and about laws that impact on equality. Further, the committee must submit regular reports to the Minister on the operation of the Act and make recommendations on any necessary amendments to the Act to improve its operation.



#### 4.2.4. National Development Plan

The National Development Plan (NDP) is a blueprint guiding document on tackling South Africa’s challenges. Of particular relevance to the topic here is that it aims to eliminate poverty and reduce inequality by the year 2030. The NDP was drawn up by the National Planning Commission (NPC) as an advisory body of multi-sectoral experts and was adopted by Cabinet in 2012 as a long term vision and plan for South Africa.

The NPC Diagnostic Report of 2011 identified key challenges of unemployment, poor quality of school education for black people; poor, inadequate and under maintained infrastructure; effects of spatial divides on inclusive development; unsustainably resource

intensive economy; poor public health system that cannot meet demand or sustain quality; poor quality and uneven public services; high corruption levels; continued inequalities and that South Africa remains a divided society and shortcomings by the government in implementing policies, as some of the key issues of concern.

The NDP asserts the six pillars on the elimination of poverty and inequality as premised on the following:

- ① To unite all South Africans around a common programme to fight poverty and inequality and to foster a spirit of unity;
- ① Active citizenry, working individually and collectively with others in their own development and in the development of the country;
- ① Growing an inclusive economy that will create more jobs, and make progress in broadening ownership of the economy;
- ① To address the urgent need to build capabilities in both citizens and the state;
- ① Build a professional and capable civil service which can weather changes in political administrations and effectively implement key priorities and programmes and:
- ① Responsible leadership throughout society to work together to solve South Africa's challenges<sup>8</sup>.



#### 4.2.5. National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance

The National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance (NAP) provides a technical guiding framework for the government's policies, programmes and strategies to combat racial discrimination and ensure the government's compliance with its international, regional and national obligations. The NAP is South Africa's commitment in meeting its obligations as a state party to ICERD, and was necessitated by the 3<sup>rd</sup> World Conference against Racism and the Durban Declaration and Programme of Action.<sup>9</sup> The NAP was adopted by Cabinet on 27 February 2019 and commits all sectors of society to the promotion and protection of human rights on anti-racism, equality and anti-discrimination.



<sup>8</sup> Speech by Trevor Manuel, Minister in the Presidency at the launch of the National Planning Commission, 15 Aug 2012

<sup>9</sup> Developing National Action Plans against Racial Discrimination- A practical guide, 2014. Available at <https://www.ohchr.org/documents/Publications/HR-PUB-13-03>



# PART E

## DISCRIMINATION

### 5. DISCRIMINATION



#### 5.1. Understanding discrimination

**Section 1 (viii) of PEPUDA defines discrimination as any “act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly; (a) imposes burdens, obligations or disadvantage on; or (b) withholds benefits, opportunities or advantages from, any person on one or more of the prohibited grounds.”**

The Act refers to differential or unequal treatment of persons based on inherent characteristics, such as those listed in section 9(3) of the Constitution, and may also include other analogous (or unlisted) grounds.

The SAHRC notes that discrimination is about social exclusion, reinforcing perceptions of inferiority or difference. It may be about the perception of human traits of what people are thought to be or represent, rather than who they are. It is mainly founded on misperception, prejudice, and stereotypes.<sup>10</sup>

<sup>10</sup> SAHRC Report on Unfair Discrimination in the Workplace, 2017



#### 5.2. Forms of discrimination

**Discrimination takes different forms, and both direct and indirect forms of unfair discrimination are prohibited.** Direct discrimination relates to a law, policy or conduct which is inherently unfair and openly treats a person or category of persons less favourably due to an inherent characteristic.

Associative discrimination arises where a person is discriminated against because they associate with another person who possesses an inherent characteristic. On the other hand perceptive discrimination takes place where a person is perceived as possessing a particular characteristic, whether or not they actually possess it (such as sexual orientation or HIV/ Aids). Direct discrimination may also manifest in instances of harassment and victimisation and indirect discrimination may have a discriminatory impact on a particular person or category of persons.

**Discrimination may take place at different levels, namely, individual and institutional.**

Individual discrimination refers to individual perceptions and conduct that discriminates, and institutional discrimination relates to policies or practices which unfairly and disproportionately restrict access to goods, services or opportunities for particular groups of people. Discrimination does not need to be intentional irrespective of the form or level.





### 5.3. Direct and indirect discrimination

Section 9(3) of the Constitution provides that “The state may not unfairly discriminate *directly or indirectly against anyone* on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.” Section 9(4) states that no person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of the subsection. This means that in terms of section 9(3), differentiation on one of the listed grounds is discrimination and in terms of section 9(4), discrimination on one of the listed grounds is presumptively unfair.

The differentiation on any listed ground constitutes discrimination and is presumptively unfair, as due to historical experience, the listed grounds when used to differentiate between

categories of persons, impair one’s fundamental dignity. For the differentiation on any unlisted ground to constitute discrimination, it will objectively be based on characteristics which might impair the fundamental human dignity of persons. If a person’s human dignity is unfairly impacted this constitutes a breach of the prohibition against unfair discrimination.

The prohibition against direct and indirect discrimination was intended to cover all forms of discrimination. The affected party has no obligation to prove that the law was intended to discriminate on one of the listed or analogous grounds.

**In other words, where someone claims they were discriminated against, they do not have to show that this was unfair. Instead, the burden is on the party alleged to have discriminated against them to show that what they did was fair.**

#### Case study on indirect discrimination

*Social Justice Coalition v Minister of Police (Western Cape Division Equality Court case number: EC03/2016)*

The Western Cape Division of the High Court passed a ground breaking judgement by recognising poverty as a ground of indirect discrimination under PEPUDA. The Court noted that although PEPUDA makes provision for direct and indirect discrimination, however, they are not specifically defined. It further noted that even though poverty was not a listed ground, the determination of unfair discrimination would have to be tested against what the Act contemplates as any other ground.

The court considered the question as to whether poverty qualifies as an unlisted ground of unfair discrimination. The applicant relied on the intersection of both race and poverty as grounds for discrimination and held that to qualify as such, poverty must result in undesirable consequences which cause or perpetuate systemic disadvantage; undermines human dignity; or adversely affects the equal enjoyments of a person’s rights and freedoms in a serious manner that is comparable to discrimination on any of the prohibited grounds.

The court heard that section 12(3) of the South African Police Service Act No 68 of 1995 grants Provincial Commissioners the power to determine the distribution of police resources between stations within their province. The court further held that the system employed by the South African Police Service (SAPS) in the allocation of its human resources in the Western Cape Province unfairly discriminates against black and poor people on the basis of race and poverty.



#### 5.4. Fair and unfair discrimination

Discrimination based on one or more of the sixteen listed grounds in PEPUA is considered to be automatically unfair, unless it can be established that such discrimination is fair. Differentiation on an unlisted ground may also constitute unfair discrimination. However, not all forms of discrimination are unfair. The Employment Equity Act (EEA) sets out two forms of discrimination which are not unfair, namely affirmative action measures which are consistent with the purpose of the Act, and conduct which excludes or prefers any person on the basis of an inherent job requirement.

These special measures intend to achieve equality for those disadvantaged by unfair discrimination.

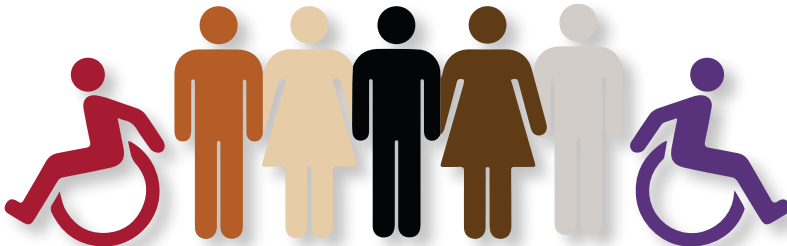
**Unfair discrimination** refers to the differential treatment of a person based on inherent characteristics which may impair a person's dignity without a legitimate reason. It may also arise where law or conduct does nothing to remedy existing disadvantages against persons or groups that have been subjected to past discrimination and having an unfair impact.

#### Case study on unfair discrimination

*The President of the Republic of South Africa v Hugo 1997 (6) BCLR 708 (CC)*

The President granted release to prisoners in certain categories in terms of the constitutional powers to pardon and reprieve offenders. The category included mothers in prison with minor children under the age of twelve years at a given date. The respondent, a father of a child under twelve challenged the constitutionality of the pardon alleging that it unfairly discriminated against him and his son on the ground of sex or gender in violation of the provisions of the interim Constitution.

The Constitutional Court held that even though the pardon deprived men of an early release, such men had no legal entitlement since the grant of a pardon is a matter within the discretion of the President and that the pardon did not disqualify fathers from applying directly to the President for decrease of sentence on an individual basis. The Court held that women prisoners as primary care givers needed to look after children, it was fair that women rather than men be released and hence the pardon was not unfair discrimination.



# PART F

## PROHIBITIONS IN PEPUDA

### 6. PROHIBITIONS IN PEPUDA



#### 6.1. Understanding prohibitions

**The Constitution guarantees equality before the law and the equal protection and benefit of the law. This means that substantive equality demands that people are not treated the same where their circumstances differ.**

This would be part of **special measures** that are necessary to redress past, current and new forms of unfair discrimination and thus an argument could be made argued that there is no violation if the categorisation is aimed at achieving a legitimate government objective and there is a rational connection.<sup>11</sup>

However the correctness of whether organs of state should continue differentiating between people and making classifications can now be regarded as questionable. Recently the SAHRC was requested by the Portfolio Committee on Justice and Correctional Services to advise it on the issue of race categorisation following a matter that came into the public domain through the media. The SAHRC had previously dismissed a similar complaint some years back, finding that racial classification was valid for empowerment purposes. The challenge from the Portfolio Committee was to see if the SAHRC still maintains this position, given the evolving context. The SAHRC is of

the opinion that special measures should be flexible enough to cater for evolving societal nuances. A delicate balance needs to be struck between the importance of self- identification and race categorisation whilst simultaneously developing special measures to holistically achieve substantive equality.

An applicant need not solely rely on Section 9(3) of the Constitution but must rely on PEPUDA in alleging discrimination. If the differentiation is on one of the listed grounds, then it is deemed to have been established. If it is not one of the listed grounds, the applicant will have to prove and establish that the differentiation is based on character which might impair on fundamental dignity.

Further, if discrimination is established on one of the listed grounds, then the discrimination is presumed to be unfair and may be rebutted by proving fair discrimination. If the discrimination is not on one of the listed grounds, the applicant will have to prove that it is unfair by demonstrating the impact of unfair discrimination. If the discrimination is unfair, the measure may still be saved in terms of the law of general application and reasonable justification in terms of the limitation clause.

<sup>11</sup> *Ibid*, The Educator and the Constitution





## 6.2. Other prohibitions

PEPUDA provides for other prohibitions such as hate speech, harassment and dissemination and publication of information that unfairly discriminates. Section 10 of PEPUDA provides that no person may publish, propagate, advocate or communicate words based on one or more of the prohibited grounds, against any person, that could reasonably be construed to demonstrate a clear intention to be hurtful; be harmful or to incite harm; and/or to promote or propagate hatred. Publication of such expression is allowed if the expression is genuinely for purposes of artistic creativity, academic and scientific inquiry, fair and accurate reporting or such publication of any information, advertisement or notice is in the public interest.

**Hate speech may be defined as expression which goes beyond mere insults or offensive language, and which may infringe the dignity of certain persons or groups.** Hate speech impacts negatively on victims in terms of their self-worth; causes significant hurt, harm, pain, distress, sorrow and humiliation; is degrading and dehumanising; has the effect of depriving victims of their fundamental rights; and it impugns the right to human dignity and equality.

The global increase in social media usage has brought about the challenge of regulating expression that is hateful and harmful. The relative anonymity and speed with which social media is able to disseminate information has created a platform for

individuals who wish to propagate hate speech. There is an urgent need for collective action between national governments, providers of global social media platforms and the general public in order to end the scourge of hate speech propagated on social media.

*The Prevention and Combating of Hate Crimes and Hate Speech Bill* is aimed at reducing offensive speech and curbing hate crimes; by proposing the criminalisation of hate speech and hate crimes. However the Bill remains pending since 2016 but will become law, should the President sign it.

Section 16 of the Constitution provides that everyone has the right to freedom of expression, which includes freedom of the press and other media; freedom to receive or impart information or ideas; freedom of artistic creativity; and academic freedom and freedom of scientific research. However this freedom is limited and does not extend to propaganda for war or incitement of imminent violence or advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

Section 12 of PEPUDA prohibits the dissemination and publication of information that unfairly discriminates, and provides that “no person may (a) disseminate or broadcast any information; (b) publish or display any advertisement or notice, that could be reasonably be understood to demonstrate a clear intention to unfairly discriminate against any person”. However bona fide engagement



in artistic creativity, academic and scientific inquiry, fair and accurate reporting in the public interest or publication of any information, advertisement or notice in accordance with section 16 of the Constitution, is not precluded by this section.

The need for clarification on the law, its interpretation and application in respect of hate speech is highlighted in the case of *Jonathan Qwelane v South African Human Rights Commission & Another*. The Supreme

Court of Appeal found that the provisions on hate speech were vague and overly broad, and therefore unduly limited the right to freedom of expression and declared Section 10 of the Constitution invalid. On 22 September 2020, the Constitutional Court heard arguments on a determination of balance between two important rights, namely, freedom of expression and prohibition of hate speech; and the outcome is expected to define legal certainty on PEPUA's prohibition of hate speech.



# PART G

## CASE LAW EXAMPLES

### 7. CASE LAW EXAMPLES



#### 7.1. The right to be treated equally before the law

The courts play a critical role in bringing about social justice in how they handle and adjudicate equality related violations. The courts have been intolerant of inequality and discrimination, by striking down policies that undermine respect for diversity and handing down judgements that reflect the need to protect human dignity. The following select cases illustrate the courts' interpretation of equality related complaints on the five key grounds of race, disability, sexual orientation, ethnic or social origin and religion:



#### 7.1.1. Equality – Race

*Rustenburg Platinum Mine v SAEWA obo Meyer Bester and Others ([2018] ZACC 13)*

The Constitutional Court held that the context and totality of circumstances in which a white employee had barged into a meeting and used the phrase "swart man" towards a fellow black subordinate over usage of an allocated parking space in a work environment was unacceptable and amounted to unfair discrimination on the grounds of race.



#### 7.1.2. Equality – Disability

*Jenny McMahon v BDFM Publishers (Pty) Ltd (EC Labour Court case no: PS53/17)*

The Labour Court held that the respondent discriminated against the applicant on the basis of disability. The litigation followed a car high jacking that the applicant suffered when she was shot as she arrived home from work, and was left paralysed and wheelchair bound. The respondent denied the applicant's application for disability benefits, refused to accommodate her on her request to partially work from home and indicated they would only compensate her for the hours that she came to work from the office yet allowed other able bodied employees to work from home.



#### 7.1.3. Equality - Sexual Orientation

*Johan Daniel Strydom v Nederduitse Gereformeerde Gemeente Moreleta Park (North Gauteng Division Equality Court case number: 26926/05)*

The Equality Court ruled that the termination of an independent contractor's employment with the church in its Arts Academy amounted to unfair discrimination, as it was based on the

contractor's sexual orientation and involvement in a same sex homosexual relationship. The court further ordered the church to pay damages for impairment of dignity, emotional and psychological suffering, and loss of earnings and issue an unconditional apology to the complainant.

The Labour Court held that the dismissal of the applicant did not constitute unfair discrimination on the basis of her social origin. Instead her dismissal was directly linked to her dishonesty and lack of integrity as she had grossly lied and misrepresented her citizenship in her application and interview.



#### 7.1.4. Equality - Social Origin

*Yonela Mbana, v Shepstone and Wylie (CCT 85/2014) [2015] ZACC 11*

The Constitutional Court dismissed the applicant's claim of unfair discrimination based on race and social origin. The applicant, a black female recipient of the firm's bursary had claimed that she had been treated differently from other white and black candidate attorneys, in that she had not been permitted to start employment till she had passed one outstanding module of her LLB degree. The court found that the law firm had sufficiently justified the deviations from its recruitment policy in other cases, which also involved both black and white students; and that there were no exceptional circumstances to justify a deviation in the applicant's case.

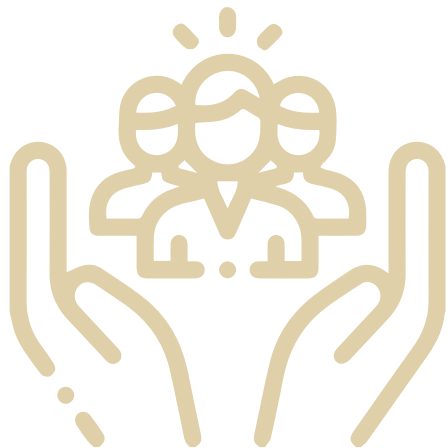
*Ntseliseng Khumalo v University of Johannesburg (Johannesburg Labour Court case no: JS 533/16)*



#### 7.1.5. Equality - Religion

*Hassam v Jacobs No and Others 2009(5) SA 572 (CC)*

The Constitutional Court held that section 1(4) (f) of the Intestate Succession Act was unfairly discriminatory and in conflict with the equality provision, in its exclusion of the surviving spouse in a polygamous Muslim marriage from inheriting the deceased's estate.



# PART H

## ENFORCEMENT AND REMEDIES FOR UNFAIR DISCRIMINATION

### 8. ENFORCEMENT AND REMEDIES FOR UNFAIR DISCRIMINATION

PEPUDA provides for various mechanisms to enforce compliance with its provisions, and if human rights are violated, the courts or other bodies with the power to make determinations about such violations may be approached for assistance. Section 20(1) of PEPUDA provides that proceedings may be instituted by any person acting in their own interest, on behalf of another person who cannot act in their own name, any person acting as a member of, or in the interests of, a group or class of persons, by any person acting in the public interest or by any association acting in the interests of its members; the South African Human Rights Commission, or the Commission for Gender Equality.



#### 8.1. Equality Courts

Equality Courts are central to the protection of the right to equality and determine matters involving unfair discrimination, hate speech or harassment. All High Courts are equality courts for their area of jurisdiction and **the Department of Justice and Constitutional Development has designated all Magistrates Courts to serve as**

**equality courts in all nine provinces**, with a view to increasing accessibility to courts in matters involving violations to the right to equality<sup>12</sup>.

**Equality Courts follow simplified processes to strengthen accessibility, and the simplified process means that attorneys are not necessary and also allow for cases to be resolved easily and quickly. Court officials are trained to provide assistance to members of the public who wish to use the services of the Equality Court, at no cost.**

An Equality Court determines whether the right to equality has been violated, sanction offenders and provide relief to persons whose rights have been violated. The courts have the power to include actions which offenders must perform to promote respect for and observance of the law and to deter further violations.

The courts can make orders that include payment of damages in respect of impairment of dignity, pain and suffering, emotional and psychological suffering. In addition, orders may include referral of a matter to the Director of Public Prosecution for the institution of criminal proceedings against the perpetrator of hate speech. The courts may also issue take

<sup>12</sup> Stand and Defend Your Right to Equality, available at [www.justice.gov.za/EQCact/docs/2011-egc-booklet.pdf](http://www.justice.gov.za/EQCact/docs/2011-egc-booklet.pdf)



down notices, which are notices instructing internet and broadcasting service providers to remove content following the publication of unlawful content.

A sample of a complaint form for the Equality Court is contained in Annexure 1; and forms in all 11 official languages are downloadable from [www.justice.gov.za](http://www.justice.gov.za) or <https://legal-aid.co.za>



### 8.1.1. Proceedings

A person wishing to institute proceedings must:

- ① Notify the clerk of the Equality Court of his or her intention to do so;
- ① The Equality Court clerk must notify the respondent within 7 days, who has 10 days to reply;
- ① The Presiding Officer has 7 days to decide whether the matter can be heard at the Equality Court or referred to an alternative forum;
- ① Two hearings will take place, if the Presiding Officer decides to hear the matter;
- ① The first sitting is the Directions Hearing, where all parties will be present;
- ① The second sitting of the hearing will decide the merits of the case based on the facts presented by both parties; and
- ① Appeals from the decision of the Magistrates Equality Courts go to the High Court or to the Supreme Court of Appeal, and any aggrieved party may apply directly from a High Court to the Constitutional Court in accordance with the rules. Decisions by the Magistrates Court relating to the analogous prohibited grounds must be submitted to the High Court for review.



### 8.2. The role of the SAHRC in promoting, protecting and monitoring equality

The SAHRC is one of the bodies upon whom the Constitution in Chapter 9, bestows the mandate to build a culture of respect for, protection of and monitoring of human rights with the vision of transforming society, securing rights and restoring dignity. The SAHRC's major functions are to promote and protect human rights as set out in the Bill of Rights, and monitor progress that the government is making to ensure the realisation of those rights.

The SAHRC and other relevant constitutional institutions may in terms of the Constitution or any other law, request any institution falling within the State or any person to supply information relating to the achievement of equality on legislative and executive action and compliance with legislation, codes of practice and programmes.

The SAHRC engages directly with members of the public to raise awareness of rights and constitutional values of such as equality and dignity through outreach interventions; the production and dissemination of educational material and research to enable the public to assert and enforce their rights. In addition, the SAHRC supports the protection of rights through investigations, litigation, hearings, dispute resolution and advancing law reform.

Services by the SAHRC are provided at no cost to any applicant or complainant. Any member of society, including children, whistle-blowers and civil society organisations may submit complaints of alleged violations of their human rights to the SAHRC. The SAHRC has the power to bring proceedings in any court in its own name, or on behalf of a person or a group or class of persons; and to investigate potential violations on its own initiative. The SAHRC may also be requested by Equality Courts to mediate equality related matters.

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 may be lodged in person, telephonically, in writing or by completing the online complaint form. If after preliminary consideration, 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. The Complaints Handling Procedures is available on the SAHRC website and complaints may be lodged through the website as well.



A sample of the SAHRC complaint form is contained in Annexure 2; and forms in all 11 official languages are downloadable from [www.sahrc.org.za](http://www.sahrc.org.za)



### 8.3. Alternative forums

The other institutions supporting constitutional democracy that serve as alternative forums for accessing equality include, but are not limited to:

**a) The Commission for Gender Equality (CGE)** that 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.

**a) The Office of the Public Protector (PPSA)** that 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.

**a) The Commission for the Promotion and Protection of Rights of Cultural Religious and Linguistic Communities (CRL Commission)** that 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.

a) 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 particular rights. 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 (CCMA) and labour courts** that deal with disputes arising in the labour environment.

**Legal Aid South Africa (Legal Aid SA)** is a state funded institution that provides free legal services and assistance through its regional justice centres and satellite offices. Legal Aid SA provides assistance to those who cannot afford private lawyers and uses a means test to determine whether one qualifies for such assistance. In addition to their own officials, Legal Aid SA can make use of other lawyers to assist members of the public free of charge. This is in contrast to lawyers in private practice who charge for their services when bringing disputes before court for adjudication, and reserve the right to refuse instructions from potential clients.

Most universities throughout the country have **law clinics** that provide legal advice and services to members of the community at no charge, to those who cannot afford private lawyers. 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 equality.



### RESOURCES:

The development of this Toolkit was made possible through the large body of knowledge that is freely available on the world-wide-web and readers might find value in reading and further exploring the below:

- The Constitution of the Republic of South Africa, 1996
- The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000
- National Action Plan (NAP) to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2019
- The South African Human Commission Act 40 of 2013
- Various SAHRC sectoral thematic statutory reports on Equality; other hearing, investigative and public enquiry reports; as well as promotional materials in the form of information sheets, research briefs and position papers which are all available at [www.sahrc.org.za/publications](http://www.sahrc.org.za/publications)
- The UN has a number of specialist bodies and mechanisms to promote, protect and monitor the right to equality. These include

the Office of the High Commissioner for Human Rights (OHCHR), the Human Rights Council, Treaty Monitoring Bodies and Special Rapporteurs, Special Representatives, Special Committees, Working Groups and Independent Experts. More information is available at: <https://www.ohchr.org/EN/HRBodies>

- The African Commission on Human and People's Rights as a regional body can also be accessed at: <https://www.achpr.org/specialmechanisms>
- Key national bodies and entities can be accessed through their respective websites, including amongst others:
  - The Department of Justice and Constitutional Development: [www.justice.gov.za](http://www.justice.gov.za)
  - Commission on Gender Equality : [www.cge.org.za](http://www.cge.org.za)
  - The Commission for the Promotion and Protection of Rights of Cultural Religious and Linguistic Communities [www.crlcommission.org.za](http://www.crlcommission.org.za)
  - Legal Aid South Africa: [www.legal-aid.co.za](http://www.legal-aid.co.za)
  - Commission for Conciliation, Mediation and Arbitration: [www.ccma.org.za](http://www.ccma.org.za)
  - Commission for Employment Equity: [www.labour.gov.za/commission-employment-equity](http://www.labour.gov.za/commission-employment-equity)
  - Human Sciences Research Council: [www.hsrc.ac.za](http://www.hsrc.ac.za)
  - The Studies in Poverty and Inequality Institute: [www.spii.org.za](http://www.spii.org.za)
  - Institute for Justice and Reconciliation: [www.ijr.org.za](http://www.ijr.org.za)
  - South African Institute of Race elations: [www.irr.org.za](http://www.irr.org.za)

Promotes  
respect  
for gender  
equality



## HOW TO CONTACT THE SAHRC:

JD House, 27 Stiemens Street, Braamfontein, Johannesburg

 011 877 3600

### Stay Connected:

 [www.sahrc.org.za](http://www.sahrc.org.za)

 [info@sahrc.org.za](mailto:info@sahrc.org.za) / [complaints@sahrc.org.za](mailto:complaints@sahrc.org.za)

 @SAHRCCommission

 SA Human Rights Commission

## PROVINCIAL OFFICES

<p><b>Eastern Cape</b> Address: 3-33 Phillip Frame Road, Waverly Park, Phase 4B, Chiselhurst, East London Tel: 043 722 7828/21/25   Fax: 043 722 7830</p> <p><b>Acting Provincial Manager</b> <b>Mr Loyiso Mpondo</b> Contact: Yolokazi Mvovo E-mail: <a href="mailto:ymvovo@sahrc.org.za">ymvovo@sahrc.org.za</a></p>	<p><b>Gauteng Office</b> JD House, 27 Stiemens Street, Braamfontein, Johannesburg Tel: 011 877 3750   Fax 011 403 0668</p> <p><b>Provincial Manager</b> <b>Mr Buang Jones</b> Contact: Nthabiseng Kwaza E-mail: <a href="mailto:nvwkaza@sahrc.org.za">nvkwaza@sahrc.org.za</a></p>
<p><b>Free State</b> 18 Keller Street, Bloemfontein Tel: 051 447 1130   Fax: 051 447 1128</p> <p><b>Provincial Manager</b> <b>Mr. Thabang Kheswa</b> Contact: Alinah Khompeli E-mail: <a href="mailto:akhompeli@sahrc.org.za">akhompeli@sahrc.org.za</a></p>	<p><b>KwaZulu-Natal</b> First Floor, 136 Margaret Mncadi, Durban Tel: 031 304 7323/4/5   Fax: 031 304 7323</p> <p><b>Provincial Manager</b> <b>Mr Lloyd Lotz</b> Contact: Kathleen Boyce E-mail: <a href="mailto:kboyce@sahrc.org.za">kboyce@sahrc.org.za</a></p>
<p><b>Limpopo</b> First Floor, Office 102, Library Garden Square, Corner of Schoeman and Grobler Streets, Polokwane Tel: 015 291 3500   Fax: 015 291 3505</p> <p><b>Provincial Manager</b> <b>Mr Victor Mavhidula</b> Contact: Mahlatse Ngobeni E-mail: <a href="mailto:mngobeni@sahrc.org.za">mngobeni@sahrc.org.za</a></p>	<p><b>Mpumalanga</b> First Floor, Allied Building, 34 Brown Street, Nelspruit Tel: 013 752 8292   Fax: 013 752 6890</p> <p><b>Provincial Manager</b> <b>Mr Eric Mokonyama</b> Contact: Carol Ngwenyama E-mail: <a href="mailto:cngwenyama@sahrc.org.za">cngwenyama@sahrc.org.za</a></p>
<p><b>Northern Cape</b> 45 Mark and Scot Road, Ancorley Building, Upington Tel: 054 332 3993/4   Fax: 054 332 7750</p> <p><b>Provincial Manager</b> <b>Ms Chantelle Williams</b> Contact: Zukiswa Louw E-mail: <a href="mailto:zlouw@sahrc.org.za">zlouw@sahrc.org.za</a></p>	<p><b>North West</b> 25 Heystek Street, Rustenburg Tel: 014 592 0694   Fax: 014 594 1069</p> <p><b>Provincial Manager</b> <b>Mr Osmond Mngomezulu</b> Contact: Poppy Mochadibane E-mail: <a href="mailto:pmochadibane@sahrc.org.za">pmochadibane@sahrc.org.za</a></p>
<p><b>Western Cape</b> 7th Floor ABSA building, 132 Adderley Street, Cape Town Tel: 021 426 2277   Fax: 021 426 2875</p> <p><b>Provincial Manager</b> <b>Ms Zena Nair</b> Contact: Shafeeqah Salie E-mail: <a href="mailto:ssalie@sahrc.org.za">ssalie@sahrc.org.za</a></p>	

# ANNEXURES:

## 1. COMPLAINANT FORM UNDER PEPUDA

J693



REPUBLIC OF SOUTH AFRICA

### FORM 2

#### INSTITUTION OF PROCEEDINGS IN TERMS OF SECTION 20 OF THE PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT (ACT NO. 4 OF 2000) [Regulation 6 (1)]

- Note: 1. Affidavits of other persons or other documentary evidence in support of the matter must be attached.
2. Your attention is drawn to the fact that the equality court may refer the matter to an alternative forum. If the matter is referred back to the equality court the clerk will inform you accordingly.

[If the space provided is inadequate, submit information as an Annexure to this form and sign each page.]

PART A: PARTICULARS OF COMPLAINANT (to be completed if lodging complaint on own behalf)						
Surname:						
Full names:						
ID. No./Date of birth:						
Residential address:						
		Code (        )				
Residential telephone number:						
Cellular telephone number:						
Work address:						
		Code (        )				
Work telephone number:						
Fax number:						
Physical address (where documents can be served):						
		Code (        )				
Preferred method in which the form is to be served:	Registered post	E-mail	Fax	Sheriff	Clerk	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Correspondence contact details (In terms of above):						
E-mail address:						
Other relevant information (such as financial position, availability of transport, socio-economic status, if an interpreter will be needed and if special requirements are needed e.g. wheelchair access) which may assist the presiding officer to make a decision regarding the forum which must deal with the complaint in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000):						

**PART B: PARTICULARS OF PERSON ACTING IN TERMS OF SECTION 20(1)(b) - (f) ON BEHALF OF ANOTHER PERSON/ASSOCIATION/BODY (Proof of capacity of person acting in terms of section 20(1)(b) - (f) to be attached)**

Surname:					
Full names:					
ID. No./Date of birth:					
Capacity of person acting in terms of section 20 (1) (b) - (f):					
Registration number of corporate body:					
Residential address:					
					Code (            )
Residential telephone number:					
Cellular telephone number:					
Work address:					
					Code (            )
Work telephone number:					
Fax number:					
Physical address (where documents can be served):					
					Code (            )
Preferred method in which the form is to be served:	Registered post <input type="checkbox"/>	E-mail <input type="checkbox"/>	Fax <input type="checkbox"/>	Sheriff <input type="checkbox"/>	Clerk <input type="checkbox"/>
Correspondence contact details (In terms of above):					
E-mail address:					
Name(s) and address(es) of person(s) on whose behalf you are acting.					
					Code (            )

**PART C: PARTICULARS OF RESPONDENT(S) (The under mentioned particulars should be furnished in respect of each respondent.**

Name of person(s)/organization(s) against whom/which proceedings are instituted:

ID. No./Date of birth/  
Registration No.:

Residential address (if applicable):

Code ( )

Residential telephone number:

Cellular telephone number:

Work/Business address:

Code ( )

Work telephone number:

Fax number:

Preferred method in which the  
form is to be served:

Registered post

E-mail

Fax

Sheriff

Clerk






Correspondence contact details  
(In terms of above):

Physical address (where documents can be served):

Code ( )

E-mail address:

**PART D: PARTICULARS OF PERSON APPEARING ON BEHALF OF COMPLAINANT**

Full names and surname of person appearing on your behalf: (representative)

ID. No./Date of birth:

Postal address of representative:

Code ( )

Residential telephone number:

Cellular telephone number:

Fax number:

E-mail address:



<b>PART E: PARTICULARS OF COMPLAINT AND RELIEF SOUGHT</b>	
Nature of complaint: (Please give full details of the complaint, the date of the incident(s) and the particulars of possible witnesses. Also indicate which right has been violated and the reasons why you think such right was violated.)	
How has it affected you?	
Documents: Are there any documents to substantiate your complaint (e.g. pay slips, references, records of conversations) to substantiate your claim? (If so please attach.):	
Relief sought: (Please indicate what assistance you require. The court may make an interim order, declaratory order, an order for the payment of damages, an order that an unconditional apology be made etc.)	

<b>PART F: PARTICULARS OF INSTITUTIONS/BODIES APPROAVHED</b>	
Particulars of institutions/bodies previously approached in respect of the complaint:	
The response of the institutions/bodies mentioned above:	

Signed at .....this.....day of..... year .....

.....  
**Signature of Complainant/Representative of class of persons/institution/organisation**

**PART G: AFFIDAVIT**

I certify that before administering the oath/affirmation, I asked the deponent the following questions and wrote down his/her answers in his/her presence:

(1) Do you know and understand the contents of the declaration?

Answer:.....

(2) Do you have any objection to taking the prescribed oath?

Answer:.....

(3) Do you consider the prescribed oath to be binding on your conscience?

Answer:.....

I certify that the deponent has acknowledged that he/she knows and understands the contents of this declaration. The deponent uttered the following words: "I swear that the contents of this declaration are true, so help me God."/" I truly affirm that the contents of the declaration are true." The signature/mark of the deponent was affixed to the declaration in my presence.

.....  
Commissioner of Oaths

Full first names and surname

.....  
.....  
.....

(Block letters)

Designation (rank).....Ex Officio Republic of South Africa

Business address.....

.....Code.....

(Street address must be stated)

Date:.....

Place.....

## 2. SAHRC COMPLAINANT FORM

### SOUTH AFRICAN HUMAN RIGHTS COMMISSION

**The new address is:**

JD House  
27 Stiemens Street  
Braamfontein  
2198

**Postal address remains as:**

Private Bag X 2700  
Houghton  
2041

**New Telephone number**

011 877-3750

**Fax:** 0864100149



### SOUTH AFRICAN HUMAN RIGHTS COMMISSION COMPLAINT FORM

For office use only

Province:	City/Town:	Reference No
-----------	------------	--------------

- Please write clearly and use CAPITAL LETTERS. If there is not enough space on this form for your answer, please use a separate page and send it to us together with this form.
- If there is more than one person who would like to send a complaint to us, each person must complete a separate form

#### PART A: YOUR DETAILS

##### 1. Name and surname

Your full name(s) and surname: \_\_\_\_\_

Your nickname(s), if any \_\_\_\_\_

##### 2. ID number

Your ID number \_\_\_\_\_

If you do not have an ID number, your date of birth \_\_\_\_\_

If you do not know your date of birth, your age \_\_\_\_\_

##### 3. Race (information required for statistical purposes only)

Please state your race \_\_\_\_\_

##### 4. Gender (information required for statistical purposes only)

Please state whether you are male or female \_\_\_\_\_

##### 5. Address and contact numbers

The address where you live \_\_\_\_\_ Postal Code \_\_\_\_\_

The address where we can send letters to \_\_\_\_\_ Postal Code \_\_\_\_\_

Telephone number at work \_\_\_\_\_ Telephone number at home \_\_\_\_\_

Cell phone number \_\_\_\_\_

Any other telephone number where we can contact you \_\_\_\_\_

Whose telephone number is it \_\_\_\_\_

Fax number \_\_\_\_\_ E-mail address \_\_\_\_\_

**Important:**

Part B must only be filled in if you are writing on behalf of somebody else, for an association or organisation – do not fill this in if your own rights have been violated.

**PART B: DETAILS OF PERSON ON WHOSE BEHALF YOU COMPLETE FORM (PERSON OR ORGANISATION)**

**6. Name and surname of person on whose behalf you are completing this form**

His or her full name(s) and surname: \_\_\_\_\_

**His/her nickname(s), if any** \_\_\_\_\_

**7. ID number**

His or her ID number \_\_\_\_\_

If he or she does not have an ID number, his or her date of birth \_\_\_\_\_

If he or she does not know his or her date of birth, his or her age \_\_\_\_\_

**8. Race** (information required for statistical purposes only)

Please state his or her race \_\_\_\_\_

**9. Gender** (information required for statistical purposes only)

Please state whether he or she is male or female \_\_\_\_\_

**10. Address and contact numbers**

The address where he or she lives \_\_\_\_\_

Postal Code \_\_\_\_\_

The address where we can send letters to \_\_\_\_\_

Postal Code \_\_\_\_\_

Telephone number at work \_\_\_\_\_ Telephone number at home \_\_\_\_\_

Cell phone number \_\_\_\_\_

Any other telephone number where we can contact him or her \_\_\_\_\_

Whose telephone number is it \_\_\_\_\_

Fax number \_\_\_\_\_ E-mail address \_\_\_\_\_

**11. Details of association, organisation or organ of state on whose behalf you are completing this form**

Full name of the association, organisation or organ of state

\_\_\_\_\_

Registration number \_\_\_\_\_

What does it do (e.g. civil, business, retailer, factory, NGO, etc) \_\_\_\_\_

Who should we talk to there \_\_\_\_\_

What is contact person's position (e.g. colleague, chairperson, director, secretary)

\_\_\_\_\_

The address where we can send letters to \_\_\_\_\_ Postal Code \_\_\_\_\_

Telephone number \_\_\_\_\_ Cell phone number \_\_\_\_\_

Any other telephone number where we can contact him or her \_\_\_\_\_

Whose telephone number is it \_\_\_\_\_

Fax number \_\_\_\_\_ E-mail address \_\_\_\_\_

### **PART C: THE COMPLAINT**

#### **12. Date**

On what date did it happen \_\_\_\_\_

#### **13. Is it still happening**

Yes \_\_\_\_\_ No \_\_\_\_\_

#### **14. Where did it happen**

Place \_\_\_\_\_ Town \_\_\_\_\_ Province \_\_\_\_\_

#### **15. If you know, which right(s) in the Bill of Rights was/ were violated or is/are being violated**

\_\_\_\_\_  
\_\_\_\_\_

#### **16. If you know, the full name(s) and surname(s) of person(s), association, organisation or organ of state who violated these rights, please tell us**

\_\_\_\_\_

#### **17. Where can we contact them**

\_\_\_\_\_

#### **18. If you do not know his/her/its/their names, please tell us anything you do know about him/her/it/them**

\_\_\_\_\_

#### **19. Did anybody see or hear what happened (only people who actually saw or heard what happened, not people who heard about it from someone else)**

Full name(s) and surname(s) \_\_\_\_\_

How and where can we get in touch with them \_\_\_\_\_

**20. In your own words, tell us exactly what happened (include all information but be as brief as possible)**

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**21. Have you reported the matter to anyone else**

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, who (e.g. Police, lawyer, Public Protector) \_\_\_\_\_  
\_\_\_\_\_

**22. Were any steps taken by the person/association/organisation/organ of state to resolve the matter**

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please tell us what \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**23. What outcome do you propose or expect from this complaint (tell us what you would like to achieve with this complaint and the relief sought)**

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**24. Do you need an interpreter when attending any proceedings, investigations or hearing at our offices**

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, the language you speak \_\_\_\_\_

NOTE: Article 40 of the Human Rights Commission Complaints Handling Procedures provides that all proceedings, investigations and hearings will be conducted in English, unless you request that the proceedings be conducted in another official language.

**25. Can we use your name in news reports or letters we write regarding this matter/ complaint**

Yes \_\_\_\_\_ No \_\_\_\_\_

NOTE: Article 8 of the Human Rights Commission Complaints Handling Procedures provides that you may request that your personal particulars be kept confidential and not be disclosed to any person outside the South African Human Rights Commission's office in order to protect your identity.

**26. Please tell us how you heard about the South African Human Rights Commission (e g radio advert, newspaper, poster, from a friend, etc)**

\_\_\_\_\_  
Signature/mark of complainant Date \_\_\_\_\_

(on behalf of yourself, another person, association, organisation or organ of state)

If on behalf of another person (including a child or a person with a mental disability),  
association, organisation or organ of state:

\_\_\_\_\_  
Signature of representative, parent, appropriate adult or guardian

Remember:

- To attach a copy of your ID, birth certificate, passport or proof of the registration number of an association, organisation or organ of state, if available.
- To attach any copies of documents which can assist in this matter.

***What to do once you have filled in the form. Once you have filled in this form, please post it to the nearest SAHRC provincial office.***

***Johannesburg***

*Private Bag X 2700, Houghton 2041*

***Free State***

*P O Box 4245, Bloemfontein 9300*

***Eastern Cape***

*P O Box 972, East London 5200*

***KwaZulu Natal***

*P O Box 1456, Durban 4000*

***Northern Province***

*P O Box 55796, Pietersburg 0700*

***Western Cape***

*P O Box 3563, Cape Town 8001*

***North West***

*P O Box 9586, Rustenburg 0300*

***Mpumalanga***

*P O Box 6574, Nelspruit 1200*

***Northern Cape***

*P O Box 1816, Upington 8800*













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