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Know Your Rights

Fundamental rights under the new Constitution



Legal Resources Centre

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*Fundamental rights under the new
constitution*



Legal Resources Centre

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'Know Your Rights' was written by Ms Shehnaz Meer, Deputy National Director of the Legal Resources Centre (LRC). She was assisted by LRC staff members. A special thanks to Arthur Chaskalson, SC and George Bizos, SC for their time and valuable contribution.

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FOREWORD

It is up to all South Africans to give meaning to the new Constitution and the fundamental rights it contains in order to transform it into a living document which upholds freedom and democracy, and restores confidence in the rule of law. For this, South Africans need to understand their fundamental rights.

'Know Your Rights' informs South Africans of the rights they will be entitled to after 27 April 1994 when the new Constitution ushers in an era of freedom and democracy.

This booklet was developed by the Legal Resources Centre (LRC), an independent non-profit law centre which seeks to use the law to pursue justice, democracy and human rights. The LRC believes in access to justice in the public interest.

The LRC employs salaried lawyers and support staff to provide skilled legal services without charge. It has offices in Johannesburg, Cape Town, Durban, Pretoria, Port Elizabeth and Grahamstown. Its clients are poor, homeless and landless South Africans, and those who suffer discrimination by reason of race, gender or social, economic and historical circumstances.

FUNDAMENTAL RIGHTS

THE RIGHT TO LIFE, FREEDOM
AND SECURITY, HUMAN DIGNITY.

THE RIGHT TO RELIGION, BELIEF
AND OPINION, BASIC EDUCATION.

THE RIGHT TO FREEDOM OF
ASSEMBLY, EXPRESSION AND
MOVEMENT, RESIDENCE

FREEDOM OF POLITICAL AND
CITIZENS' RIGHTS, PROPERTY
RIGHTS, CHILDREN'S RIGHTS

RIGHT TO PRIVACY

RIGHT TO LANGUAGE

AND CULTURE

JUSTICE

A NEW CONSTITUTION!

1994 will be remembered as one of the most important years in South Africa's history.

Not only will all adult South Africans, both black and white, vote together for the first time to elect a new government, but on 27 April 1994 the country will get a new Constitution.

This Constitution will mark the birth of a new nation and usher in an era of freedom and democracy.

The Constitution itself states that it will provide 'an historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice; and a future founded on the recognition of human rights, democracy, and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex.'

WHAT IS A CONSTITUTION AND WHY IS IT SO IMPORTANT?

A Constitution contains the rules and principles according to which a country is governed. It is the most important — or supreme — law of the land and no other law may differ from it.

It describes how the government will be elected, what powers it can and cannot have, and what rights citizens are entitled to. All laws have to be made in accordance with the principles enshrined in the Constitution.

The new South African Constitution is an interim Constitution. This means that it is not the final Constitution.

After the elections, there will be a Government Of National Unity for five years. There will also be a new parliament which will make laws and act as a Constituent Assembly.

A Constituent Assembly is an elected body which draws up a new Constitution for a country. In South Africa it was agreed that this will be done within two years.

The interim Constitution says, however, that some principles contained in it, called Constitutional Principles, cannot be changed and must be part of the final Constitution. For example, there can be no racial and gender discrimination, and everyone shall be equal before the law.

The Constitutional Principles also state that everyone shall enjoy all universally accepted fundamental rights.

WHAT IS MEANT BY FUNDAMENTAL RIGHTS?

Chapter Three of the Constitution guarantees fundamental rights to every citizen. This is commonly referred to as the 'Bill of Rights'.

Fundamental rights are the basic rights that we are entitled to as human beings. They are called fundamental rights because they are basic to our lives.

The United Nations adopted the Universal Declaration of Human Rights in 1948, and most countries now accept that all people are entitled to fundamental rights.

The new Constitution introduces legally protected fundamental rights into South Africa for the first time. Before this new Constitution, there was no law which guaranteed fundamental rights, and indeed, in many cases, the government acted to take away fundamental rights.

There may, however, be special circumstances where another law can **limit** your fundamental rights. The Constitution allows this only if it is considered reasonable and acceptable in a democratic society based on freedom and equality.

There is only one time when the Constitution allows the State President to **suspend** some fundamental rights and that is under a State of Emergency. The State President can declare a State of Emergency if the safety of the country is threatened by war or general disorder, or at a time of national disaster. The purpose of declaring a State of Emergency is to restore peace and order.

Chapters Seven and Eight of the Constitution explain how you can protect your fundamental rights. If your rights are abused, you can get help from different bodies and individuals, such as the Public Protector or the Constitutional Court.

This booklet explains your fundamental rights under the new Constitution and the places you can go to for help. These rights have been earned by you through many decades of struggle against oppression.

These are *your* fundamental rights. Know them, enjoy them, protect them and above all, assert them!

WHAT ARE YOUR FUNDAMENTAL RIGHTS?

Sections 8 — 32 of Chapter Three in the Constitution set out your fundamental rights. They are as follows:

The right to equality and freedom from discrimination (Section 8)

The law must treat and protect everyone equally. No person shall be discriminated against because of his or her race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language.

Not only is apartheid forbidden under the Constitution, but the Constitution also allows for affirmative action measures. This means that special measures can be taken by the government to make up for the way people suffered under apartheid.

The right to life (Section 9)

The right to life for all South Africans is protected by the Constitution. Nobody has the right to deprive you of your life.

In other countries the courts have given this right a wide meaning. They have said that the right to life includes the right to try to make a living and to be protected from pollution.

In India there was a case where a rural community won the right to have a road built because they claimed that without a road they would not be able to make a living.



The right to human dignity (*Section 10*)

You have the right to be treated with respect and dignity by the state and by your fellow South Africans. No one can insult you because of your race, colour or appearance.

The right to freedom and security (*Section 11*)

You have the right to be free. You cannot, for example, be detained without trial and you cannot be tortured or given cruel or inhuman punishment.

No one can take your freedom away from you unless the law allows this, for example, if you are arrested on suspicion of committing a crime.

Servitude and forced labour (*Section 12*)

There can be no slavery and you cannot be forced to work for any person against your will. For example, a farmer cannot take away his labourers' identity books or passports in order to keep them working on his farm in bondage.

The right to privacy (*Section 13*)

Your home and person are private. No one can search your home or your person, or interfere with your post and telephone unless the law allows this for good reason.

The Criminal Procedure Act allows your home and person to be searched in certain cases, for example, when a serious crime is being investigated.

The right to religion, belief and opinion (Section 14)

You have the right to practise whatever religion you wish without interference.

You also have the right to freedom of conscience, thought, belief and opinion. You cannot be forced to do something against your conscience. Neither the state nor any person can act against you because of your beliefs.



There shall be academic freedom. The state shall not interfere with what is taught at universities and colleges. People can no longer be banned or arrested, as they were in the past, because the government does not like what they teach.

The right to freedom of expression (Section 15)

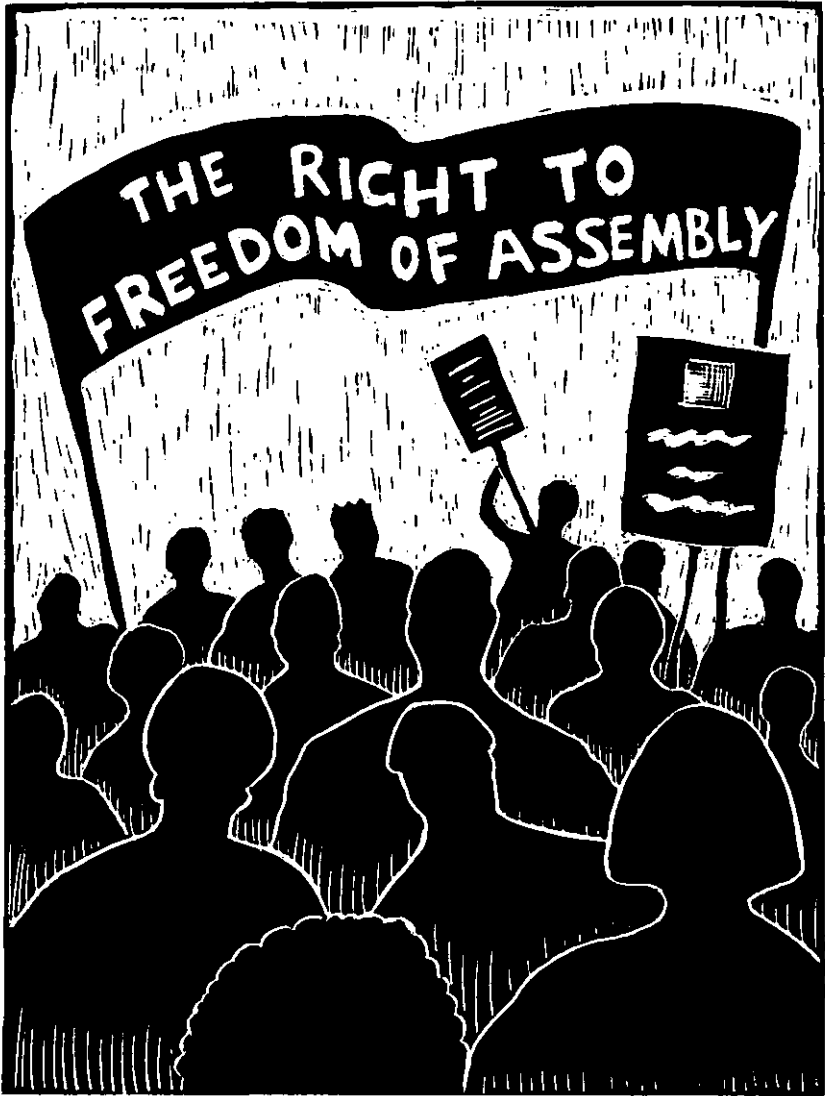
This is the right to say what you like, even speaking out against the government, or putting forward a view that is not popular, provided that you do not break the law. For example, you cannot spread false rumours about somebody or insult their character. If you do so, you may be sued for defamation.

Freedom of expression also includes freedom of the media (newspapers, radio and television), artistic and creative freedom (artists, singers, actors and performers) and scientific research.

The state broadcasting system must be independent and impartial. For example, the state broadcasting system cannot favour one political party over another.

The right to freedom of assembly, demonstration and petition (Section 16)

All people are free to have meetings, demonstrate and present petitions, as long as they do so peacefully and without carrying weapons. For example, a law cannot be passed prohibiting peaceful demonstration, as was the case in the past, but there can be a law to stop people from carrying guns or other weapons.



The right to freedom of association (*Section 17*)

You have the right to join any organisation of your choice. In the past, certain political parties were banned. This will no longer be allowed under the new Constitution.

The right to freedom of movement (*Section 18*)

All South Africans have the right to travel freely in South Africa. Unlike the past, when Africans had to carry passes in urban areas, or when Indians were not allowed to be in the Orange Free State overnight, everyone now has the right to move about freely.

The right to freedom of residence (*Section 19*)

You have the right to choose to live anywhere in South Africa. No one can stop you from living in any place because of your race and no part of South Africa can be reserved for people of a single ethnic group. There can be no such thing as the Group Areas Act which in the past forced people of different racial groups to live apart from each other.

Citizens' rights (*Section 20*)

As a South African citizen, you have the right to enter, remain in, and to leave the country, and the right to a passport.

People cannot lose their citizenship, as they did in the past, when the Bantustans were created.



Your South African citizenship can only be taken away from you for a good reason in law, for example, if you take on the citizenship of another country.

Political rights (Section 21)

You have the right to take part freely in political activity. All adult South Africans have the right to vote in secret and to stand for elections.

Access to court (Section 22)

The courts must serve all South Africans equally and fairly. It is your right to have disputes settled by an independent and impartial court.

Access to information (Section 23)

You have the right to all information held by the state in order to exercise and protect your rights. For example, the state may own a chemical plant which is emitting poisonous gasses into the air and an environmental organisation wants the plant to be closed. It has the right to demand information to prove that the plant is dangerous.

Administrative justice (Section 24)

Government officials must act fairly and lawfully towards you, and you are entitled to reasons for administrative decisions.



For example, if there is a decision by a municipal official to withdraw your licence or permit for your business, you will have the right to ask for written reasons for this action.

Detained, arrested and accused persons (*Section 25*)

No one can be arrested or detained without good reason, and correct legal procedures must be followed. Detainees and sentenced prisoners will have the following rights:

- 1 To be informed in a language they understand of the reason for their arrest
- 2 To be kept under humane conditions
- 3 To consult with a lawyer of their choice or, if needs be, a lawyer provided by the state
- 4 To be visited by a spouse, next of kin, priest, and doctor.

People arrested on suspicion of committing a crime must be told in a language that they understand of their right to remain silent. They must be brought to court within 48 hours.

Anyone who has been charged with a crime has a right to a fair trial by an independent and impartial court.

An independent and impartial court cannot favour either side in a case. For example, the court should not be influenced by the persons race, sex, or political beliefs; nor should it be influenced by anybody else, including the government. The court must only look at the facts of the case and apply the law.

Economic activity (*Section 26*)

All South Africans have the right to try to make a living anywhere in South Africa. In the past, certain race groups could not have businesses in certain areas. This will no longer be the case.

Labour relations (*Section 27*)

You have the right to fair labour practices in the workplace. This means that you cannot be unfairly dismissed or treated unfairly in the workplace. For example, you cannot be paid below the minimum wage in your industry, or be deprived of your leave and sick pay.

South African workers shall have the right to join trade unions and to strike. Employers also have the right to form employers' organisations, and may in some instances enforce a lockout. (A lockout occurs when there is a dispute between an employer and workers, and the employer closes the workplace in an attempt to get the workers back to work.)

Property rights (*Section 28*)

All people shall have the right to buy and rent property in South Africa. Property rights cannot be taken away except in accordance with the law.

The state may only take away your property for the benefit of the public. For example, your property can be bought for the building of a road, a bridge, a school, a hospital, or even a park.

If this happens, you shall be paid an agreed price for your property, or a fair price determined by a court.

People who were forced off their land under apartheid will be entitled to apply to a special body, **The Commission for the Restitution of Land Rights**, to try to claim back their land. This is a complicated matter, however, and may require the assistance of a lawyer.

The right to a healthy environment (*Section 29*)

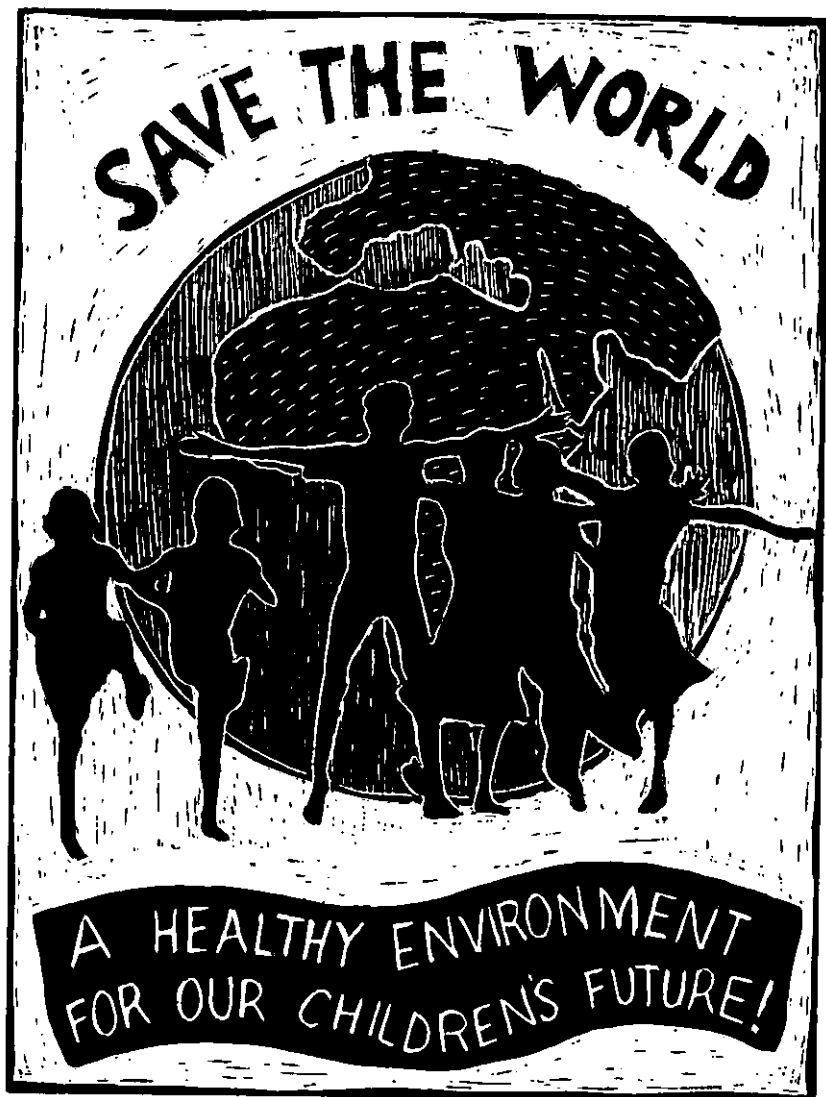
Every person shall have the right to a healthy environment. For example, you cannot dump rubbish except in special areas, and no one, including big companies, can pollute dams, rivers or beaches.

Children's rights (*Section 30*)

Children are people under the age of 18. Children have the right to proper care and security, and to basic nutrition, health services and education.

Children shall not be abused and exploited in the workplace, nor be allowed to do work that is dangerous or harmful to their health or well-being.

Children who are detained must be treated in a manner that takes into account their youth. The interests of the child shall be put first in all matters concerning children.



Language and culture (*Section 31*)

All people shall have the right to the language, culture, customs and traditions of their choice.

The constitution lists 11 official languages. They are: Afrikaans, English, isi Ndebele, Sesotho sa Lebowa, Sesotho, siSwati, Xitsonga, Setswana, Tshivenda, isiXhosa and isiZulu.

The Constitution states that a member of Parliament can address Parliament in the official language of his or her choice.

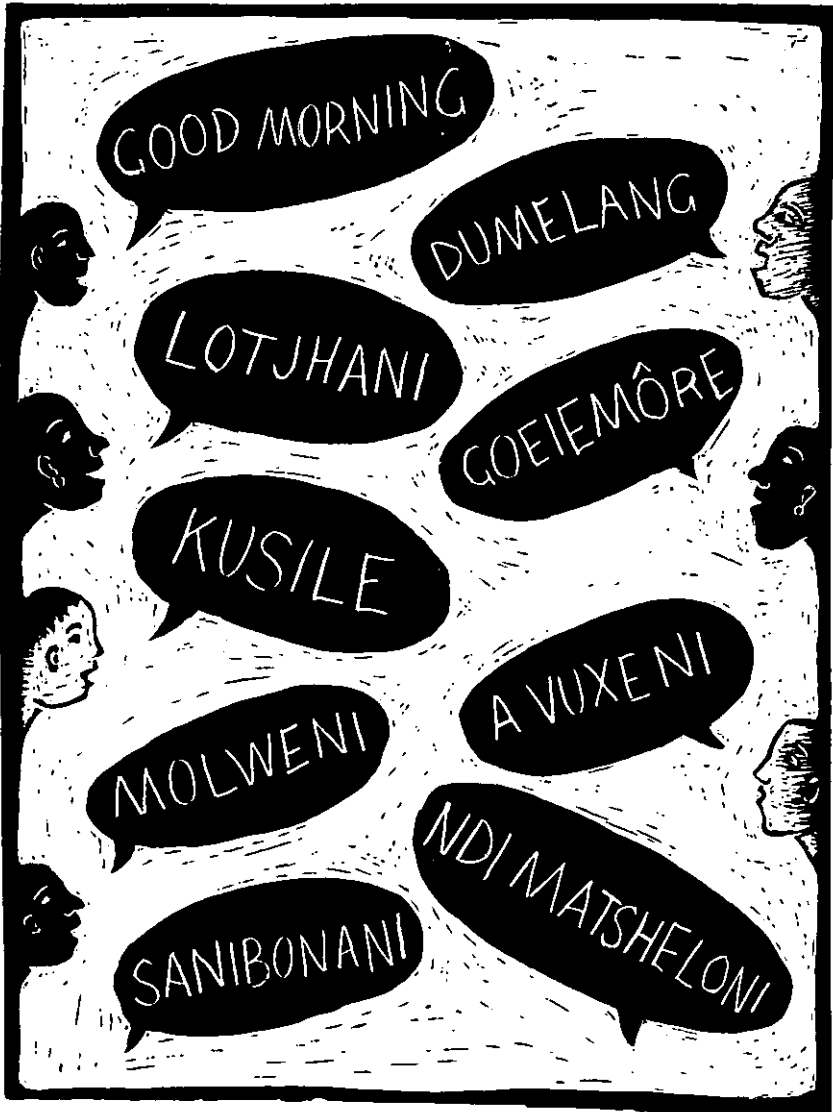
The Constitution also says if you go to a government department, you have the right to ask to be spoken to in one of the official languages, where this can reasonably be done.

The right to a basic education (*Section 32*)

All people have the right to a basic education. You can no longer be refused admission to a place of learning because of your race.

All people have the right to be taught in a language of their choice, where this can reasonably be done.

Places of learning for different cultural, language and religious groups may be established as long as they do not refuse admission to anyone because of their race.



FUNDAMENTAL RIGHTS THAT CAN NEVER BE TAKEN AWAY — EVEN UNDER A STATE OF EMERGENCY

Although some fundamental rights may be taken away during a State of Emergency, the Constitution says that they may be taken away only if it is necessary to bring back peace and order.

There are, however, certain fundamental rights that can never be taken away, not even under a State of Emergency. These are:

- The right to go to court to protect your fundamental rights
- The right not to be discriminated against
- The right to life
- The right to human dignity
- The right not to be tortured
- The right not to be subjected to servitude or forced labour
- The right to freedom of religion, belief and opinion
- The right to fair labour practices
- The right to join trade unions and employer organisations
- The right of children not to be neglected or abused; and not to be subjected to exploitative labour practices; nor to be allowed to do work which is dangerous or harmful to their health and well-being

- The right of children in detention to be treated in a way that takes into account their youth.

Even during a State of Emergency, the laws which are made can only limit fundamental rights to the extent that it would be considered reasonable in a democratic society.

During a State of Emergency people can be detained without trial, but the Constitution provides special protection for them. They will have the right to see a lawyer and doctor of their choice, and to go to court to apply for their release.

WHO CAN YOU GO TO IF YOU NEED HELP WITH YOUR FUNDAMENTAL RIGHTS?

1 The Courts

A special court, to be known as the Constitutional Court, has been created under the new Constitution and will be established after the elections. The purpose of this court is to deal with all matters relating to the Constitution, including the protection of fundamental rights.

The Constitutional Court will hear Constitutional matters, including appeals from the Supreme Courts, which will also have the power to deal with certain constitutional matters and fundamental rights.



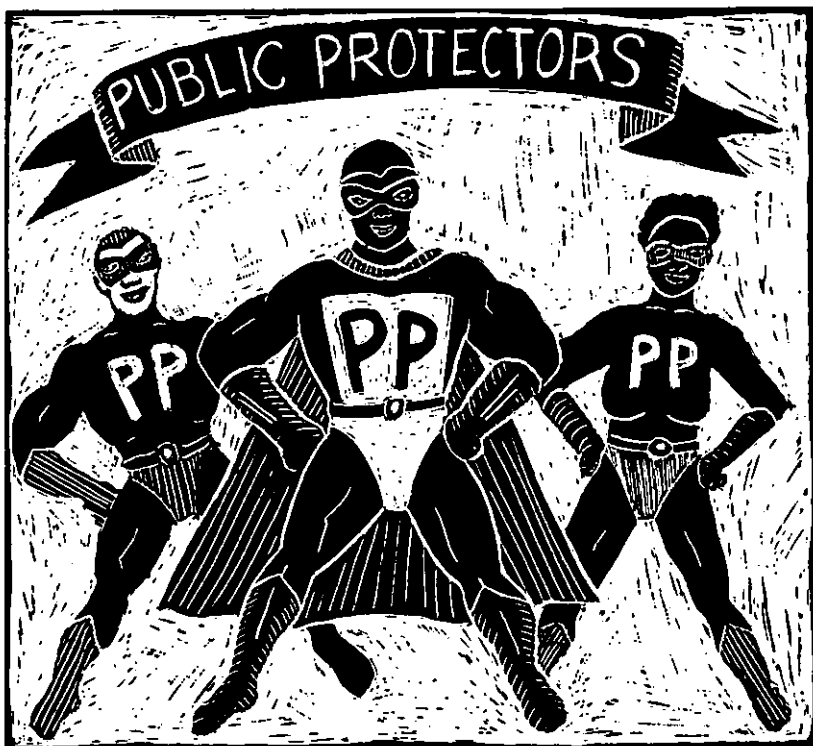
The Constitutional Court will be the highest court in the land for all constitutional matters.

You do not personally have to be wronged to go to court. You can go to court on behalf of a person who is unable to go. You can also go to court on behalf of a group of persons whose rights are affected. An organisation can also go to court on behalf of its members, to protect their fundamental rights.

It is even possible to go to court to protect the rights of society as a whole. In law, this is referred to as the 'public interest'.

2 The Public Protector

The Public Protector is a new position created by the Constitution. He or she will be appointed by the President and will be responsible for setting up Public Protector offices in different regions.



The job of the Public Protector will be to receive and investigate complaints about government officials, and to try to solve these complaints or refer them to the relevant authority. If you have such a complaint, report your complaint to your nearest Public Protector's office.

The Public Protector will be appointed soon after the new Constitution comes into effect on 27 April 1994. Look out for the names and addresses of these officials in the media or, for example, make enquiries at your community organisations, local police station or magistrate's court.

3 The Human Rights Commission

Another new body created by the Constitution to protect fundamental rights will be the Human Rights Commission.

The task of the Human Rights Commission will be to act as a watchdog to protect fundamental rights. The Human Rights Commission will set up offices to do this.

Any complaints about fundamental rights can be taken to the Human Rights Commission for investigation. If the Commission finds that there has been interference with a fundamental right, it will try to help and may even provide financial assistance to go to court.

The Human Rights Commission has not yet been established. Look out for its addresses in the media or, for example, make enquiries at your community organisations, local police station or magistrate's court.

4 The Commission on Gender Equality

The job of this Commission will be to protect the fundamental right which says that the law must treat men and women equally. It will do this by advising the lawmakers on laws that affect equality between men and women and on the position of women.



Complaints about unequal treatment because of your gender can be referred to this Commission. For example, if you apply for a job and are refused because you are a woman, you can go to this commission for help.

The Commission on Gender Equality will also be established after 27 April. Look out for its addresses in the media or, for example, make enquiries at your community organisation, local police station or magistrate's court.

5 The Commission on Restitution of Land Rights

The function of this Commission is to deal with claims from people whose land was taken away from them under an apartheid law. If you have such a claim, you should approach this Commission for assistance to get your land back.

WHERE TO GET HELP TO PROTECT YOUR FUNDAMENTAL RIGHTS

In addition to the bodies mentioned above, you can go to the following organisations for help. They have offices in most provinces. Look up their phone numbers and addresses in the telephone book.

- Advice Offices
- Black Lawyers Association
- Black Sash
- Community Law Centres
- Lawyers for Human Rights
- Legal Aid Boards
- Legal Resources Centres
- National Association of Democratic Lawyers
- University Law Clinics

LEGAL RESOURCES CENTRE

The Legal Resources Centre has offices in the following cities.

National Office:

8th Floor, Elizabeth House, 18 Pritchard Street, Johannesburg.
Tel (011) 836-8071. Fax (011) 833-1747.

Johannesburg:

4th Floor, Elizabeth House, 18 Pritchard Street, Johannesburg.
Tel (011) 836-9831. Fax (011) 836-8680.

Pretoria:

5th Floor, Centenary House, Bureau Lane, Pretoria.
Tel (012) 323-7673. Fax (012) 21-6680.

Durban:

71 Ecumenical Centre, 20 St Andrews Street, Durban.
Tel (031) 301-7572. Fax (031) 304-2823.

Cape Town:

5th Floor, Greenmarket Place, 54 Shortmarket Street,
Cape Town.
Tel (021) 23-8285. Fax (021) 23-0935.

Port Elizabeth:

2nd Floor, Standard House, 334 Main Street, Port Elizabeth.
Tel (041) 56-4905. Fax (041) 56-0106.

Grahamstown:

116 High Street, Grahamstown
Tel (0461) 2-9230/2-9251. Fax (0461) 2-3933.

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This booklet, developed by the Legal Resources Centre and the Friedrich Naumann Foundation, explains your fundamental human rights under the new Constitution. It also tells you where to go for help to protect your rights.

Read about your fundamental rights. Know them, enjoy them, protect them and above all, assert them!

This booklet is also available in Zulu and Afrikaans. Editions in other languages are in preparation.

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