



# TRAIN THE TRAINERS MANUAL

TAKING THE COMMISSION TO THE PEOPLE





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## PURPOSE OF THIS MANUAL

**T**he purpose of this manual is to provide basic human rights education and information to community trainers and assist those running human rights awareness programmes. The South African Human Rights Commission (the Commission), through its Advocacy and Communication Unit (AdvoComm), runs public outreach engagements as part of the Commission's awareness programmes aimed at communities, community based organisations and community leaders or representatives. These public outreach engagements can include public information sessions, focus group discussions, dialogues, campaigns, workshops or roadshows.

This manual has been simplified in order to cater for the type of audience that the messages are aimed at, who are the general public and communities at grassroots level. The manual is written and presented in a very basic, informal, and easy to understand format. It is an updated version of the one the Commission produced in 1999.

The manual aims to educate and inform trainers about:

- The Constitution
- The Bill of Rights
- The mandate, powers, and functions of the Commission
- Cases that are investigated by the Commission and those that fall outside its mandate
- How to lodge a complaint with the Commission
- The Commission's complaints handling procedures and
- Strengthening relations with communities and community organisations.



## Note to trainers

The project is participatory and is ideally suited to groups of less than 20 trainers. In situations where the number is more than 20, the training should be converted to a workshop.

You might wish to select only some of the content when conducting a community outreach session that is aimed at a particular audience. For example, you might want to only deal with women's rights, children's rights or socio-economic rights during an awareness session or, you might want to include information from other relevant sources like the Commission for Gender Equality (CGE) or Public Protector South Africa (PPSA). The Commission encourages you to look at as many manuals and resource packs as possible; invites you to use all aspects of the manual as you wish and further requests that, no matter what type of awareness activity you run, you do include the section on the Commission as contained in this manual. Remember, the Commission is the main body set up to deal with violations of human rights and adding information on the Commission to your programme can only further empower people to claim their rights. Community based organisations who require training on human rights education may contact the Commission and request such training, which will be provided free of charge.

The manual is currently available in English; however, facilitators are encouraged to conduct their presentation in the dominant language that the community is comfortable with and to make use of interpreters if necessary.

## CHAPTER

# 01

## HUMAN RIGHTS AND THE BILL OF RIGHTS

### Note to trainers

This section contains information you will need to know in order to conduct a successful human rights public outreach engagement as well as some additional information as a background to the topic. This manual is not exhaustive and trainers should read any other materials as well as regularly check the press for reports on the Commission and its work.



## 1 Human Rights and the Bill of Rights

### 1.1 What are human rights?

Human rights are the rights and freedoms that everybody has from the moment of birth, simply because they are human beings. They are not privileges which need to be won and they apply equally to everybody, regardless of age, sex, race, ethnicity, wealth, or social standing. As they are rights, they cannot be taken away from anyone by government but they can be limited. (Section 36 of the Constitution provides for such a limitation. Rights can be suspended during states of emergency and section 37 of the Constitution provides for such suspension.)

In South Africa, as in many other countries, rights have been listed in the Bill of Rights, which is part of the Constitution. This listing records what rights are protected and makes them part of the highest law of the land so that they are difficult to change.

It is very important to remember that these rights belong to everyone. This means people have a responsibility to respect other people's rights. These rights do not replace the laws we already have, so people must respect all laws that are in place. For example, the fact that I have a right to follow my own customs does not mean that I can do whatever I want. I must make sure that in following my customs, I do not infringe on anyone else's rights.

### 1.2 History of human rights

The idea that people have basic rights, such as the right to life, has been around for centuries. In the past, these rights were largely protected by criminal law. For example, killing another person is regarded as the crime of murder by most societies, and taking someone's property without their consent is regarded as theft. Long ago, some countries, like the United States of America (USA), wrote lists of the types of rights that people should have. These lists are usually called Bills of Rights and they are often included in a country's constitution to make sure they are protected.

The notion of human rights gained significance after the Second World War (1939 – 1945). During this war, many people including Jews, gypsies and homosexuals, were persecuted by the Nazis who were the ruling party in Germany at the time. Their property was taken away from them and millions were killed in the concentration camps set up by the Nazis. After the war, a new body was created to try to ensure that similar wars and misdeeds did not happen again. This body, known as the United Nations (UN), is made up of representatives from almost all countries in the world and has its head offices in New York in the USA.

State governments that were part of founding the UN, set out the basic rights which everyone should have in a document called the Universal Declaration of Human Rights (UDHR). This document was written in 1948 and countries were asked to agree to the rights set out in it. In South Africa at the time, the then National Party had just come to power and as South Africa was pursuing its apartheid policies, it never agreed to the document.

Soon new rights were added to the list of rights in the UDHR and two new documents were written. One is the International Covenant on Economic, Social, and Cultural Rights which includes the right to follow your own culture and to decide where you want to live; and the other is the International Covenant on Civil and Political Rights which includes the right to a fair trial and the right to vote. Countries were asked to sign these documents to signal their agreement and commitment that they would protect the rights set out in them. Documents like these are known as *international instruments*. There are now many of these which were written by member countries of the UN to deal with specific areas of human rights. They include the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Elimination of all Forms of Discrimination against Women, and the Convention on the Rights of the Child.

Not only has the UN written documents like this, as groups of countries have also got together to write similar *regional instruments* for their regions. For example, one of the main *regional instruments* for Africa is the African Charter on Human and Peoples' Rights, also known as the African Charter. These regional instruments work in the same way as international instruments. Countries sign them to indicate that they commit to protecting the rights set out in them.

### 1.3 The Constitution and the Bill of Rights

The Constitution is the highest or supreme law of the country; the obligation imposed by it must be fulfilled, and any law or conduct inconsistent with it is invalid. A Constitution sets out how the government of a country must be made up and how the country must be run. The Bill of Rights is a document similar to an international instrument, but it only works in the country where it was written and adopted. It is a list of human rights which a country decides all its people should have. A Bill of Rights is often included in the Constitution of a country, as has been done in South Africa where it is Chapter 2 of the South African Constitution.

The Constitution of South Africa is much harder to change than other laws, usually requiring at least a two-thirds majority. This is unlike other laws, which only need a simple majority of members of Parliament to agree before they can be changed. Before the two houses of Parliament - the National Assembly and the National Council of Provinces - can amend the Constitution, at least two-thirds (66%) of the members of the National Assembly, and at least six of the provinces in the National Council of Provinces must agree.



Although we have had previous constitutions in South Africa, we did not have a Bill of Rights until April 1994. In April 1994, the first democratic elections were held in South Africa and marked the first time that all South Africans of 18 years and older, regardless of race, were allowed to vote. Before this election could take place, a constitution had to be written saying how the new government would be made up. This constitution was negotiated by all parties at the World Trade Centre talks and was known as the Interim Constitution.

The Interim Constitution was the first constitution in South Africa to have a Bill of Rights. As the Interim Constitution was written before the 1994 elections, and also by people who had not been elected into government, all the political parties agreed that it would be a temporary constitution and that the new government would be given the job of writing a new constitution for South Africa. This new Constitution and Bill of Rights was written by the Constitutional Assembly, made up of representatives elected to government during the 1994 elections. It came into force in February 1997.

### 1.4 How does the Bill of Rights work?

The Bill of Rights protects people from abuse of power by the government. For example, the right to vote as provided for in Section 19 of the Constitution is there to make sure that all citizens can vote and that the government cannot decide to write a law saying, for example, only men can vote. This is what people mean when they say that the Bill of Rights operates *vertically*, that is, between the government and the people. Sometimes, the rights in the Bill of Rights operate between people, or *horizontally*, as well as vertically. For example, the Bill of Rights in Section 9 provides that no-one may discriminate against anyone else, which means that no one may treat other people differently because of their race, sex, age, gender, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, disability, religion, conscience, belief, culture, language, or birth.

Some rights in the Bill of Rights can never operate between people. For example, the right to citizenship is protected to make sure that the government cannot take your citizenship away. Since a person can never take another person's citizenship away from them, this right clearly only governs the relationship between the state and its citizens. The Constitution provides that the Bill of Rights operates horizontally whenever possible and where it is not clear whether the right operates between people, this matter must be decided by the highest court, which for South Africa, is the Constitutional Court.

### 1.5 What human rights are protected in the Bill of Rights?

#### Note to trainers

Listed below are all the rights in the Bill of Rights, as well as a simple language definition of them, which will be suitable for you to use when conducting community information sessions. Illustrative examples to provoke thoughts on how the Bill of Rights may be interpreted are provided. *Note: For a full version of these rights, you must read and understand Chapter 2 of the Constitution.*



### 1.5.1. Equality (Section 9)

All people are equal and must be treated equally. No-one may discriminate against you because of your race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, or birth. However, discrimination is allowed if it is fair. For example, if the government wanted to employ bus drivers, it would be fair to discriminate against someone who is blind due to the nature of the job. Where someone establishes that they were discriminated against, they do not have to show that this was unfair. Instead, it is up to the person who discriminated against them to show that what they did was fair.

Another example that is allowed is affirmative action within the Public Service Act. This policy tries to make up for the wrongs of the past, where people were treated unfairly because of their race or gender. This sometimes means that people who received an advantage because of apartheid will now be discriminated against, and this is allowed because it is necessary to set right the unequal situation which apartheid created.

*The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA) provides more details on this right.*

#### CASE STUDY

*(President of the Republic of South Africa and Another v Hugo)*

A case of unfair discrimination was brought against President Nelson Mandela when he said that certain women and children should be released from prison as part of an amnesty programme. Hugo, the person bringing the claim of unfair discrimination, said it was unfair that men weren't given the same treatment as women. The President's counter argument was that as women prisoners were needed to look after the children, it was fair that they, rather than the men, should be released. The court said the President's action was not unfair.

### 1.5.2. Human dignity (Section 10)

You have dignity because you are a human being and your dignity must be respected and protected.

### 1.5.3. Life (Section 11)

You have the right to life and not even the government may take your life away.

### 1.5.4. Freedom and security of the person (Section 12)

- You can only be imprisoned if there is a legitimate reason, for example where you have been found guilty by a competent court of law.
- You cannot be detained without trial, and torture is not allowed.

- You have the right to be free from all forms of violence, even in your own home. This means there must be no abuse of partners, wives, husbands, children, girlfriends, or boyfriends.
- You cannot be treated or punished in a cruel, inhumane, or degrading way. Corporal punishment is not allowed, even in schools.
- You have control over your body, have the right to make decisions about whether you want to have children or not, and cannot be forced to undergo medical or scientific experiments against your will.

#### **1.5.5. Slavery, servitude and forced labour (Section 13)**

No one may be subjected to slavery, servitude, or forced labour.

#### **1.5.6. Privacy (Section 14)**

You cannot be searched or have your home or possessions searched. The government cannot take your possessions, open your mail, or listen to your telephone calls.

#### **1.5.7. Freedom of religion, belief and opinion (Section 15)**

- You can believe whatever you want and you can follow the religion of your choice.
- State institutions such as public schools can follow religious practices such as prayers in the morning, but learners and educators cannot be forced to attend them.
- You can get married traditionally or under the laws of your religion, as long as these laws do not go against the Constitution.

#### **1.5.8. Freedom of expression (Section 16)**

This is sometimes referred to as freedom of speech. Everyone, including the press, may say, write or print whatever they want but no-one may spread propaganda for war or encourage people to use violence or hate speech. Language which tries to get people to cause harm to other people because of their race, ethnicity, gender, or religion is not allowed.

#### **1.5.9. Assembly, demonstration, picket and petition (Section 17)**

You can gather together with other people; hold a demonstration, picket or present a petition but you must do this peacefully and you cannot carry a weapon or disturb public peace.

#### **1.5.10. Freedom of association (Section 18)**

You are free to associate with whomever you want to.

#### **1.5.11. Political rights (Section 19)**

If you are a citizen, you can join a political party, stand for election to lead such party, encourage other people to join this party or start your own political party. Elections for national, provincial and local government must be held regularly every 5 years and they must be free and fair. If you are a citizen, and at least 18 years old, you can vote in secret in any of these elections and stand for election yourself.

*The Independent Electoral Commission (IEC) can assist with more information on this right.*

### 1.5.12. Citizenship (*Section 20*)

Your citizenship cannot be taken away from you. For example, under apartheid, some people were classified as citizens of the so-called Homelands or Independent States of Transkei, Ciskei, Venda and Bophuthatswana and their South African citizenship was taken away from them. This happened to people even if they were born in South Africa and had never been to these 'states' so this right is to ensure that this does not happen again.

### 1.5.13. Freedom of movement and residence (*Section 21*)

- You can go or live wherever you want in South Africa.
- You can leave South Africa if you choose and come back at any time.
- The government cannot take away your passport except where the limitation clause applies.

For example, under apartheid, the Group Areas Act 41 of 1950 set out that different race groups must live in different areas. Many political leaders had their passports taken away to stop them from going out of the country. This right is to ensure these same things never happen again.

### 1.5.14. Freedom of trade, occupation and profession (*Section 22*)

You can choose to do whatever work you want; of course you should have the qualifications, skills, or experience needed for the job.

### 1.5.15. Labour relations (*Section 23*)

- You have the right to be treated fairly at work.
- Workers can form and join trade unions, get new members, go on strike and get together with other unions to bargain for what they want their work conditions to be.
- Employers can form and join employers' organisations.
- Trade unions and employers' organisations can decide how they will be run.

*The Labour Relations Act 66 of 1995 provides more information on this right.*

### 1.5.16. Environment (*Section 24*)

You have the right to a healthy environment and the government can pass laws that protect the environment. For example, you can use this right to stop a factory from polluting the river where your community gets water.

### 1.5.17. Property (*Section 25*)

Your property can only be taken away from you by the government if:

- The law allowing this applies to people in general and not only one group;
- Your property is going to be used for a public purpose or is in the public interest. For example, the government needs to build a dam, and the water will be used by everyone, and/or your property will be flooded;

- You are paid for your property. The amount of money the government will pay can either be agreed between you and the government; or if you cannot agree on the amount, the court can decide.

Land reform is allowed and the government must try to pass laws to make sure that everybody can own land and gets access to land. Therefore, if you or your community lost land after 1913, which is the time when laws making it impossible for black people to own land were passed, you can either apply to get the land back, get alternative land or be paid for the land you lost. People who are labour tenants on someone else's land are also protected.

*For more on this you can contact the Land Claims Commission or the Department of Rural Development and Land Reform*

#### **1.5.18. Housing (Section 26)**

You have a right to have access to adequate housing. You cannot be evicted from your home and your home cannot be broken down unless a court authorized it through an eviction order.

*For more on this right, you can contact the Department of Human Settlement*

#### **1.5.19. Health care, food, water and social security (Section 27)**

The government must ensure that you have access to:

- Health care services, remembering that you cannot be refused medical care in an emergency, even if you cannot pay for it at that time;
- Food and water;
- Social security, including assistance to people who cannot support themselves and their dependents.

No-one can stop you from getting these services or take them away from you if you already have them. The government must pass laws and use the money it has, to try and make sure you get these services.

#### **1.5.20. Children (Section 28)**

In addition to all the other rights in the Bill of Rights, children under the age of 18 have rights such as the right:

- To family care or other care if the child is removed from its family;
- To food, shelter, and health care;
- Not to be abused or neglected;
- Not to be forced to work or given work which is not suitable for a child;
- Not to be detained unnecessarily but if this happens, the child must be kept separate from adults;
- To be given a lawyer in a case against someone else, if necessary;
- To be protected and not to be used during a war.

**1.5.21. Education (Section 29)**

You have the right to basic education, including adult basic education and in the language of your choice where possible. The government must try to make sure that people can get further education such as at a University or Technikon. Schools, Universities and Technikons that are privately run are allowed, but they cannot discriminate against students because of their race.

**1.5.22. Language and culture (Section 30)**

You can use the language and follow the culture that you choose, but you must respect other people's rights when you do so. For example, if, in observing your culture you need to slaughter an animal but you live in a built-up area, you may not be able to do this at your home because it could go against other people's rights to a healthy environment.

**1.5.23. Cultural, religious and linguistic communities (Section 31)**

Communities can enjoy their own culture; practice their own religion; use their own language; and set up their own organisations as long as they respect other people's rights when they do so.

*For more information on this right you can contact the Commission for the Protection and Promotion of Cultural, Religious and Linguistic Communities (CRL Commission).*

**1.5.24. Access to information (Section 32)**

You have the right to any information which the government has, and information that someone else has, if you need it to protect one of your rights. For example, if you are accused of committing a crime, you will usually be allowed to see the statements of witnesses which the prosecutor has, as the prosecutor is employed by the government and has information about you.

*For more information on this right you can read the Promotion of Access to Information Act 2 of 2000.*

**1.5.25. Just administrative action (Section 33)**

Administrative action is action by the government or government departments when doing their work and which is allowed by the law. Such action must be reasonable and the procedures used must be fair. You can ask for written reasons for any decision that is made by the government which goes against one of your rights.

**1.5.26. Access to courts (Section 34)**

You can have a legal problem decided by a court or a similar structure to enforce your rights.

**1.5.27. Arrested, detained and accused persons (Section 35)**

This section sets out the rights which you have if you are arrested, imprisoned or accused of committing a crime. They include the right:

- To remain silent and not be forced to make a confession;
- To appear before court within 48 hours of your arrest;
- To be released, either on warning or on bail, unless there is a good reason to keep you in jail;
- To be given a lawyer paid for by the government if you cannot afford a lawyer and an injustice might happen if you are not given a lawyer;
- To be kept in reasonable conditions and to be given free food, something to read, and medical treatment and
- To speak to and be visited by your family, a religious counsellor and your own doctor.

If the government gets evidence against you by going against one of your rights, this evidence will not be allowed in court as it would be unfair. For example, if the police suspect that you are hiding dagga at home and they torture you until you tell them where it is; they will not be able to use this in court as the Bill of Rights says you cannot be tortured.

### 1.6. Economic and Social rights

One of the major differences between the Interim Constitution and the new Constitution with its Bill of Rights, is the addition of many more economic and social rights. This term is generally shortened to socio-economic rights. These rights try to ensure that people’s quality of life is improved, by ensuring that basic needs are catered for. They include environment, housing, health care, food, water, social security, and education.

These rights differ from political rights such as the right to vote, and civil rights such as the right to not be detained without trial, in the extent and manner to which they are easily enforceable. Rather than saying the government has an obligation to give you these services and if it does not, you can go to court to force it to do so, as would be the case if you were denied a civil or political right, the argument is that the government need only be *seen* to be making efforts that show that it is possible for you to get the services. This does mean that government should do more each year to make it possible for people to enjoy these rights.

**CASE STUDY**  
*(Government of the Republic of South Africa and others v Grootboom and others)*

This case shows the desperation of hundreds of thousands of people living in deplorable conditions throughout the country. The Constitution obliges the state to act positively to ameliorate these conditions. The obligation is to provide access to housing, health-care, sufficient food and water, and social security to those unable to support themselves and their dependants. The state must also foster conditions to enable citizens to gain access to land on an equitable basis. Those in need have a corresponding right to demand that this be done.

## 1.7. Can the rights in the Bill of Rights be limited?

The rights in the Bill of Rights can sometimes be limited as provided for in the limitations clause of section 36 of the Constitution. This can only be done if:

- The law limiting a right applies to everybody;
- There is a good reason to limit the right and;
- Limiting the right makes sense in an open and democratic society.

When deciding whether a right can be limited, a court will also look at:

- Which right it is that is being limited
- Why it is being limited and whether the limitation will achieve this purpose
- Whether there is another way to achieve this purpose without having to limit the right and
- What the limitation is and how serious it is.

For example, you have the right not to be searched or to have your property taken by the government. However, the police are allowed to search you and take your property if they have reason to believe that it does not belong to you or has been obtained unlawfully. In this example the limitation of the right is allowed because the law applies to everybody, there is a good reason for this law, and all open and democratic countries allow the police to carry out their work in this manner.

Some rights can also be suspended or taken away for a short time during a state of emergency as provided for in section 37 of the Constitution. A state of emergency can only be called by the government when the security of the country is threatened by war, invasion, revolution, or when there has been a natural disaster such as a flood. Unlike previous states of emergency during the apartheid years, a state of emergency can only be called for a very limited period, and can be reviewed and set aside by our courts. Take note however that there are some rights, like the right to life, the right to human dignity, and some of the rights that arrested, detained, or accused people have which cannot be suspended and can never be taken away, even during a state of emergency.



# CHAPTER 02

## ENFORCING THE RIGHTS IN THE BILL OF RIGHTS

### 2.1 Institutions supporting constitutional democracy (chapter 9 institutions)

Chapter 9 of the Constitution establishes several independent institutions supporting constitutional democracy. These institutions are independent, subject only to the Constitution and the law. They must be impartial and must exercise their powers and perform their functions without fear, favour, or prejudice. Other organs of state, through legislative and other measures, must assist and protect these institutions to ensure the independence, impartiality, dignity, and effectiveness of these institutions. No person or organ of state may interfere with the functioning of these institutions.

These institutions share two specific roles, that of ensuring accountability in government by monitoring government, and of contributing to transforming South Africa into a society in which social justice prevails. Although they receive funding from government, the institutions are not an arm of government, as they must remain impartial and free from partisan politics and any form of political influence.

These institutions are:

- The South African Human Rights Commission (SAHRC, and referred to in this document as the Commission) whose mandate is to promote, protect and monitor the attainment of human rights in South Africa. More details are set out in the next section.
- The Public Protector South Africa (PPSA) who investigates complaints relating to government and government officials. The PPSA conducts investigations into alleged improper conduct by organs of the state, facilitates resolution of disputes, reports, and recommends remedial action.
- The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Commission) which promotes respect for the rights of cultural, religious and linguistic communities to develop peace, friendship, humanity, tolerance and national unity amongst the different communities in South Africa and recommends the establishment of cultural councils for different communities.
- The Commission for Gender Equality (CGE) can investigate and challenge laws, practices, and customs that discriminate against people based on their sex or gender, because of the way society regards people and their traditional roles. Examples would be refusing to allow a woman into a bar, just because she is a woman, or not allowing a man to be a nursery school teacher or a woman a combat soldier.

- The Auditor General (AG) checks and audits the accounts of all levels of government and formulates an opinion on their compliance with the relevant laws that govern the use of public money. The AG may not work for a political party.
- The Independent Electoral Commission (IEC) runs and ensures free and fair elections at provincial and national level.

## **2.2. The South African Human Rights Commission (SAHRC/ the Commission)**

### **2.2.1. What is the SAHRC and why do we need it?**

South Africa has a long history of undemocratic rule and human rights abuses. As the country moved into a new democratic era, there was an urgent need to begin building a culture of respect for, and protection of human rights, and to ensure that this democracy grows and prospers. One of the best ways of doing so was to ensure that we have a Constitution with a Bill of Rights accepted by all South Africans. The founding fathers and mothers of our democracy recognized that the Bill of Rights may be worthless unless there is some way of making sure that these rights are respected and protected and that government is monitored to make sure that it does not violate these rights. This transformational mandate has been given to the SAHRC so that it mobilises and builds support around human rights norms through a network of citizens and, in turn, strengthens the ability of the new democratic order to protect the values set out in the Constitution.

### **2.2.2. Aims and Functions of the SAHRC**

Section 184 of the Constitution sets out that the Commission must:

- a) Promote respect for human rights and a culture of human rights
- b) Promote the protection, development and attainment of human rights and
- c) Monitor and assess the observance of human rights in the Republic.

The Commission has the power to:

- a) Investigate and report on the observance of human rights
- b) Take steps to secure appropriate redress where human rights have been violated
- c) Carry out research and
- d) Educate.

Each year, the Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of those rights in the Bill of Rights which concern housing, health care, food, water, social security, education, and the environment.

The Commission has additional powers and functions prescribed by national legislation, the South African Human Rights Commission Act 40 of 2013, with the vision of transforming society, securing rights, and restoring dignity.

In summary, the Commission has three major functions:

- Promote human rights as set out in the Bill of Rights;
- Protect these rights and
- Monitor the progress that government is making to ensure the realisation of socio-economic rights.

### *Promoting human rights*

The Commission promotes human rights by

- Educating, raising awareness, and training people about human rights, the Bill of Rights, and its work;
- Giving advice on human rights to all levels of government and
- Working with stakeholders to provide information on human rights.

### *Protecting human rights*

The Commission protects human rights by

- Monitoring what the people and the government do and by monitoring new laws to make sure they do not go against the Bill of Rights;
- Taking complaints and deciding what investigations to hold about human rights violations and how they should be handled and
- Taking steps to correct human rights violations.

### *Monitoring socio-economic rights*

Each year, the Commission must request all government departments to explain what they have done to make it possible for people to enjoy socio-economic rights such as the right to housing, health care, food, water, social security, education, and the environment; and must publish reports on all of this.

## **2.3. Reporting human rights violations to the SAHRC**

### **2.3.1. Who can lodge a complaint?**

Complaints can be lodged at any office of the Commission by:

- Any person acting in his or her own interest;
- Any person acting on behalf of another person who cannot act in his/her own name;
- Any person acting as a member of or in the interest of a group or class of persons;
- Any association or organisation acting in the interest of its members.

### *2.3.2. What type of human rights violations does the SAHRC deal with?*

The Commission has the jurisdiction to conduct or cause to be conducted any investigation on receipt of a complaint or on its own accord, into any alleged violation of or threat to a fundamental right. A human rights violation occurs when any of a person's rights in the Bill of Rights are abused or violated. The Commission tends to concentrate on the more serious types of violations. For example, discrimination on any of the grounds set out in the right to

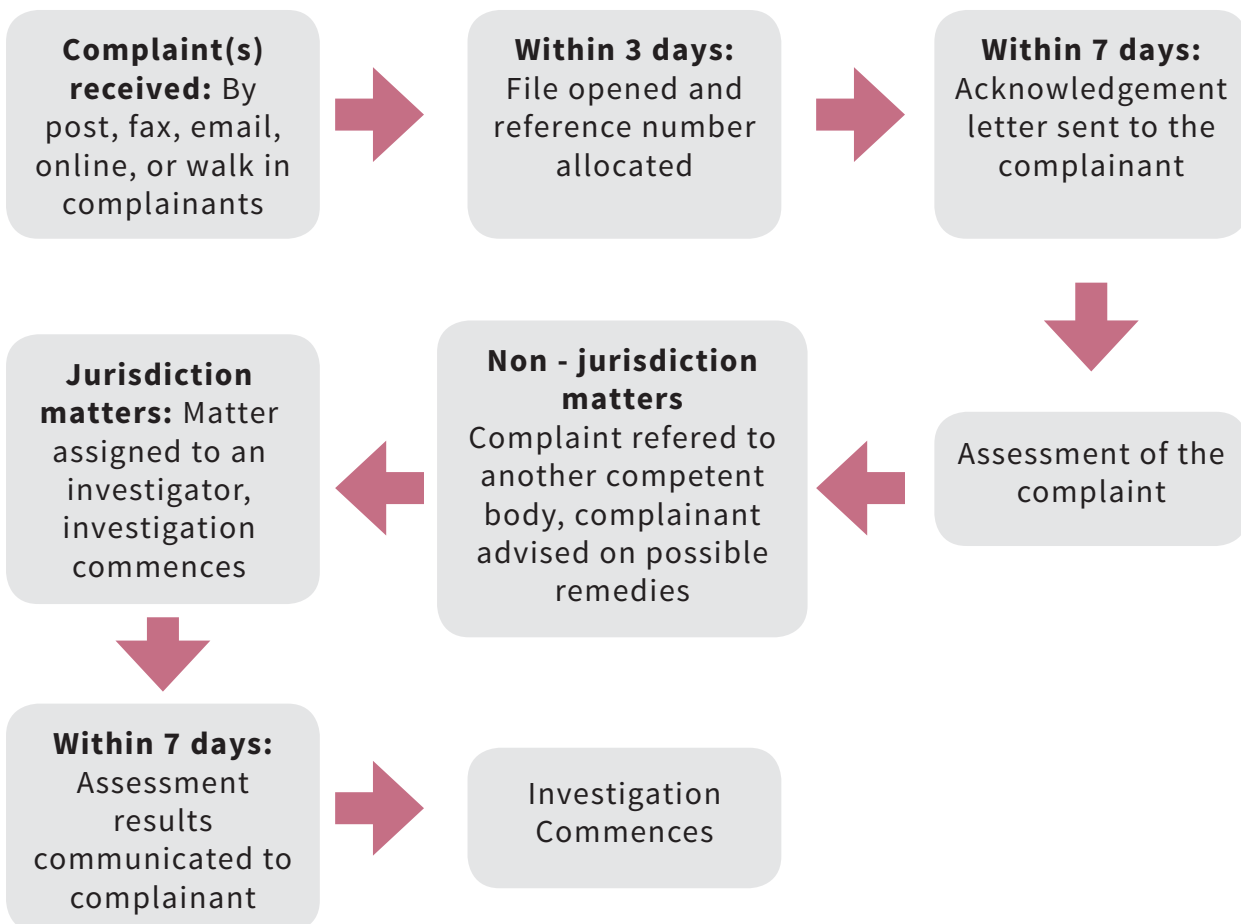
equality, (except where the discrimination is based on sex or gender which it can refer to the CGE); matters where there is damage to the environment; and matters where the right to human dignity is violated.

**2.3.3. Complaints not dealt with by the SAHRC**

The Commission has no jurisdiction to deal with complaints regarding conduct or omissions that occurred prior to 27 April 1994. Further, the Commission may reject any complaint which:

- Is based on hearsay, rumour, or media reports, which cannot be verified;
- Is couched in a language that is abusive, insulting, rude, or disparaging. However, the Commission will consider the complaint if the language is removed;
- Is the subject of a dispute before a court of law, tribunal, or any statutory body with internal dispute mechanisms, or has been settled between the parties, or in which there is a judgement on the issues in the complaint, or finding of such a court of law, tribunal, statutory body or other body
- Is viewed as frivolous, misconceived, unwarranted, incomprehensive, and manifestly incompatible with fundamental rights, or does not comply with the provision of the SAHRC Act;
- Is lodged after the expiry of a period of three years from the date upon which an alleged violation of a fundamental right occurred. In this case, an application for condonation can be made.

**2.4. Process flow of complaints**



## 2.5. Resolution of complaints

Where sufficient information has been provided by the complainant, the Commission will proceed to send a letter to the respondent containing the allegation and asking for a response. Thereafter the complaint will be dealt with using one of the following methods the Commission uses to resolve complaints:

### 2.5.1. Mediation, conciliation and negotiation

The Commission may use any of these alternative dispute resolution methods to resolve any dispute or to rectify an act or omission:

- **Conciliation** means bringing two opposing sides of a complaint together to reach a compromise;
- **Negotiation** means discussions aimed at reaching an agreement. Where the complaint cannot be resolved by neither negotiation nor conciliation process, the next attempt will be mediation;
- **Mediation** is an informal process where an impartial third party as the mediator, in this instance the Commission, helps the disputing parties find a mutually satisfactory solution to the issue.

Where the complaint cannot be resolved by conciliation, negotiation, or mediation, the next step will be to proceed with a hearing process.

### 2.5.2. Investigations and hearings

The Commission may conduct investigations or hearings necessary for the resolution of any complaints before it, or to fulfil its constitutional mandate. During these hearings, the Commission can require any person to supply information and particulars which are necessary for the investigation. The Commission also has the power to compel anyone to attend these investigations as well as the power to search any premises and seize anything related to the investigation.

### 2.5.3. Litigation

The Commission has the power to take any matter to a competent court at any stage. This is provided for in section 7 of the Commission's Act or section 20 of PEPUDA. It can do this in its own name or on behalf of a person or group or class of people.

In addition, there are several organisations and structures which deal with specific types of human rights violations, free of charge. These include:

- Independent Police Investigative Directorate (IPID) which investigates all cases where the police have acted wrongly or have violated anyone's rights;
- Commission for Conciliation, Mediation and Arbitration (CCMA) which helps anyone who is a victim of an unfair labour practice or whose labour rights are violated. Before approaching this Commission, you must first have tried to solve the problem directly with your employer/ employee;

- Legal Aid South Africa (LASA) provides people who cannot afford a lawyer with a lawyer in different types of cases, including criminal cases and has offices at every Magistrate's Court;
- Legal Aid Clinics are mainly located within Universities and help people who cannot afford a lawyer. People who require assistance with a legal problem can telephone, write to or visit the University closest to them;
- Non-Governmental Organisations (NGOs) also assist with legal advice and are located across the country including rural areas. Examples of these are legal advice offices, Black Sash, Lawyers for Human Rights, and Legal Resources Centre to mention a few.

## **2.6. Conclusion of complaints**

A complaint is concluded under the following circumstances:

- After the conclusion of the assessment if the complaint is either rejected or referred to another competent body for further action;
- Complaint is resolved by stipulated alternative dispute resolution methods;
- After an investigation, where it is found that there was no violation of fundamental rights, or there was violation or threat to a fundamental right but the violation is remedied;
- Complaint is withdrawn;
- After submission of a report on a hearing.

## **2.7. How to fill in the SAHRC Complaint Form**

The complaint form contains questions on the information that the Commission seeks to investigate. The trainer can assist a complainant to fill in the form if they experience any difficulties. In particular, complainants will need to include:

- Personal details (address, phone number for record purposes and for the Commission to make contact);
- Which right has been violated;
- Details of the complaint or incident such as the date, place, and what exactly happened;
- The names and contact addresses of any witnesses; and
- The names of the person or people who violated the rights (if known).

The SAHRC's provincial offices will make available complaint forms to the community trainers who in turn are encouraged to contact officials of the Commission to arrange for the collection of completed complaint forms. Each office needs to work out the modalities of the method and regularity of contact and the Commission must consider bearing the associated costs of such contact and collection.

# CHAPTER 03

## WORKING WITH STAKEHOLDERS

### 3.1. The importance of stakeholders

One of the consequences of apartheid was that many communities remained unaware of their rights, unable to navigate the legal system to secure protection of their rights, and lacked basic access to recourse. People continue to experience violations of their rights, particularly those related to socio-economic rights and equality, daily. A survey conducted by the Department of Justice and the Foundation for Human Rights in 2012 on the general levels of awareness of rights, revealed that:

- Less than 10% of South Africans have read the Constitution or the Bill of Rights or had these documents read to them, and a decreasing number of the population are in fact aware of the Bill of Rights
- Only 10% of South Africans know of any institution which can assist them and less than 1% of South Africans can correctly identify any of the institutions created under the Constitution to support democracy
- 65% of South Africans indicated they did nothing when their rights were violated.

The result of the survey was indicative of the minor impact that previous awareness programmes had on communities. This lack of awareness was also indicative of the fact that collective efforts were glaringly lacking on the part of the Commission and its civil society stakeholders and partners and there is thus a need to intensify outreach programmes.

The SAHRC aims at creating informal partnerships with community based organisations to act as the Commission's primary point of entry in various communities where the Commission is not present. Several factors work in favour of community based structures and organisations, namely that they are based in the areas where people live, speak the same language and are known and trusted by the community; have the best information about local conditions and know the history and needs of the communities and are keen to contribute to the work of the Commission.

The SAHRC therefore calls on any stakeholder be it community based organisations, faith based organisations or social justice activists to assist with spreading the human rights message. Civil society organisations that are already running any human rights awareness or constitutional education programme can assist the Commission by making use of this manual to speak on human rights, the SAHRC, its role and function, and how to report violations to it. In turn, the Commission can offer basic training to equip civil society on how to use this manual and provide other educational awareness material for use by community based organisations for their respective outreach programmes.



## Note to trainers

### SOME FACTORS TO CONSIDER WHEN PLANNING AN OUTREACH AWARENESS PROGRAMME

To ensure your outreach is a success, proper planning and conceptualization is required. The best way is to hold a proper planning meeting with members of the community and community leaders well beforehand. In some areas, this is of absolute necessity to ensure that you will be allowed access to a community and even to ensure your personal safety. At this meeting, you will be able to ascertain what facilities are available and what the most pressing issues in the area are, which will enable you to plan the content more effectively and to concentrate on those parts of the outreach which address the needs and questions of the community.

During community outreach engagements trainers are encouraged to liaise with their local municipality should they require assistance in terms of using public venues. Trainers are encouraged to liaise with the office of the Speaker in all municipalities as this office is responsible for public participation and can assist with community mobilization.

Various community radios offer platforms for public service announcements at no charge. Trainers are encouraged to explore this avenue to strengthen their mobilization plans.

Trainers are encouraged to circulate attendance registers during outreach sessions as this will serve as a record of how many people are being reached.

### TRAINERS ARE URGED TO OBSERVE THE FOLLOWING:

- Make sure that you know your subject matter well and where you need additional educational material on a specific right you can contact the advocacy and research officer in your province;
- Design a programme ensuring that you know how long to spend on each topic and be mindful of the overall length of the engagement;
- Arrange for a translator if you do not speak the local language;
- Check the appropriateness of the venue in terms of centrality and accessibility to cater for older persons and persons with disabilities;
- Check that you have packed all the materials you will need, including pamphlets to be distributed, evaluation forms, complaint forms and attendance register. You can request these from the Commission's office in your province;
- Be on time but be sensitive to the fact that people may need to do household chores before attending the session or travelling long distances and will most probably be relying on



unpredictable and unreliable transportation. Therefore, allow some time for latecomers to arrive before starting your session;

- Introduce yourself to community leaders who attend the outreach beforehand as a sign of respect and courtesy;
- Speak clearly and slowly. Be prepared to deal with questions at any time and not only during time set aside for discussions. At the same time, do not allow unnecessary questions to distract you. If someone constantly interrupts, politely ask them to hold their questions until question time and indicate when this is likely to be;
- Be prepared to spend some time after the session in informal discussions with those who may prefer to engage directly with you and not in the presence of everyone else.

### ADDING A PRESENTATION ON THE COMMISSION TO A COMMUNITY AWARENESS PROGRAMME ON HUMAN RIGHTS

It is likely that as a stakeholder who is active in the human rights field you are already familiar with most of the information in this manual. If so, then we request that you select and add a brief presentation on the Commission to your own community awareness programme on human rights to cover the following fields:

- The need for the Commission;
- Its role, functions, responsibilities and powers;
- What type of cases can be reported to it;
- How to report a violation to the Commission; and
- What happens to your case after you have reported it?

The SAHRC acknowledges and expresses its gratitude to all trainers who through this project, are working tirelessly to create awareness, deepen understanding and enhance a culture of human rights in South Africa.

# ANNEXURE A COMPLAINT FORM

## SOUTH AFRICAN HUMAN RIGHTS COMMISSION

33 Hoofd Street

Private Bag X 2700

Telephone number: 011 8773600

Braampark Forum 3

Houghton

Fax numbers:

Braamfontein

2041

011 403-0668

2198

## 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)*

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)*

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 SAHRC 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 SAHRC 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.

# ANNEXURE B

## EXAMPLE OF AN EVALUATION FORM

Event Name \_\_\_\_\_

Place \_\_\_\_\_

Date \_\_\_\_\_

Facilitator \_\_\_\_\_

### Part 1

Please score your reaction to the following statements:

STATEMENT	STRONGLY DISAGREE	DISAGREE	NEITHER AGREE NOR DISAGREE	AGREE	STRONGLY AGREE
The information presented was well organised	1	2	3	4	5
You felt comfortable asking questions	1	2	3	4	5
The Presenter was experienced in the subject / topic	1	2	3	4	5
The presenter was well prepared	1	2	3	4	5
There was the right amount of time for discussion	1	2	3	4	5
This learning opportunity was relevant to me/ my work/ role	1	2	3	4	5
The learning opportunity met the stated objective	1	2	3	4	5
This learning opportunity was a worthwhile use of my time	1	2	3	4	5
I will recommend this learning opportunity to others within my organisation/ community	1	2	3	4	5

**Part 2**

1) What are the 2 key learning points that you will take away from this session / events?

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2) What are the next steps you will take when you return to your office with regards to what you have learnt during this session?

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3) Please share any other comments you may have.

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# ANNEXURE C

## STAKEHOLDERS CONTACT DETAILS

**Commission for Gender Equality:** Complaints Line 0800 007 709; Fraud line 0800 204 968

**Independent Electoral Commission:** Election House, Riverside Office Park, 1303 Heuwel Rd, Centurion, 0051, Tel: [012 622 5700](tel:0126225700)

**Commission for the Protection and Promotion of Cultural, Religious and Linguistic Communities:** Forum 4 Braampark Office Park 33 Hoofd Street Braamfontein. Tel: 011 358 9100

**Commission for Conciliation, Mediation and Arbitration:** 20 Anderson St, Johannesburg, 2001 Tel: [011 377 6650](tel:0113776650)

**Department of Rural Development and Land Reform** (and Land Claims Commission): Call Centre 0800 007 095

**Department of Human Settlement:** Govan Mbeki House, 240 Justice Mahomed Street, Sunnyside, Pretoria. Call Centre: 0800 1(HOUSE) 46873 Fraud & Corruption: 0800 701 701

**Office of the Public Protector:** 175 Lunnon Street, Hillcrest Office Park, Pretoria. Tel: 012 366 7000/7112, Toll free: 0800 112 040

**Office of the Auditor General:** 300 Middel Street, New Muckleneuk, Pretoria. Tel: 012 426 8000

**Independent Police Investigative Directorate:** City Forum Building, 114 Madiba St, Pretoria. Tel: [012 399 0000](tel:0123990000)

**Legal Aid South Africa:** Head Office 29 De Beer Street, Braamfontein, Johannesburg. Tel: 011 877 2000, Toll-free Advice Line: 0800 110 110, Fraud and Corruption Ethics Hotline: 0800 153 728

**Black Sash:** National Office, Elta House, 3 Caledonian Road, Mowbray, Cape Town. Toll free: 072 663 3739

**Lawyers for Human Rights:** Heerengracht Building, 87 De Korte St & Melle Street, Braamfontein, Johannesburg. Tel: [011 339 196](tel:011339196)

**Legal Resources Centre:** 16 Pritchard St, Johannesburg. Tel: [011 403 0902](tel:0114030902)

**Foundation for Human Rights:** Old Trafford 3 Building, Isle of Houghton, 36 Boundary Road Parktown, Johannesburg. Tel: 011 484 0390 or 011 593 4000



Notes

Lined area for taking notes, consisting of 20 horizontal lines.

# Contact us

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

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

Twitter: @SAHRCommission / Facebook: SA Human Rights Commission

## Head Office

Braampark Forum 3, 33 Hoofd Street Braamfontein

Tel (011) 877 3600 / Fax 011 403 0668

## Eastern Cape

4th Floor Oxford House, 86 Oxford Street,  
East London

P.O. Box 972, East London, 5200

Tel: 043 722 7821-8/ Fax: 043 722 7830

## Free State

18 Kellner Street, Westdene Bloemfontein

P.O. Box 4245, Bloemfontein, 9301

Tel: 051 447 1130 /Fax: 051 447 1128

## Gauteng Office

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

Private Bag X2700, Houghton, 2041

Tel: 011 877 3750 / Fax 011 403 0668

## KwaZulu-Natal

First Floor, 136 Margaret Mncadi, Durban

P. O. Box 1456, Durban, 4000

Tel: 031 304 7323-5/ Fax: 031 304 7323

## Limpopo

First Floor, Office 102, Library Garden  
Square, Corner of Schoeman and Grobler  
Streets, Polokwane

P.O. Box 4431, Polokwane, 0700

Tel: 015 291 3500/ Fax: 015 291 3505

## Mpumalanga

4th Floor Carltext Building, 32 Bell Street,  
Nelspruit

P.O. Box 6574, Nelspruit, 1200

Tel: 013 752 8292 / Fax: 013 752 6890

## Northern Cape

45 Mark and Scot Road, Ancorley Building,  
Upington

P. O. Box 1816, Upington, 8801

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

## North West

25 Heystek Street, Rustenburg

P.O. Box 9586, Rustenburg, 0300

Tel: 014 592 0694 /Fax: 014 594 1069

## Western Cape

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

P.O. Box 3563, Cape Town, 8000

Tel: 021 426 2277/ Fax: 021 426 2875



**south african**  
**human**  
**rights**  
**commission**

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

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