

# Chapter 2 - Bill of Rights

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## **Rights**

7. (1) This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.

(2) The state must respect, protect, promote and fulfil the rights in the Bill of Rights.

(3) The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill.

## **Application**

8. (1) The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.

(2) A provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.

(3) When applying a provision of the Bill of Rights to a natural or juristic person in terms of subsection (2), a court

(4) A juristic person is entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and the nature of that juristic person.

## **Equality**

9. (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance

persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

(3) 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.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

### **Human dignity**

10. Everyone has inherent dignity and the right to have their dignity respected and protected.

### **Life**

11. Everyone has the right to life.

### **Freedom and security of the person**

12. (1) Everyone has the right to freedom and security of the person, which includes the right

(2) Everyone has the right to bodily and psychological integrity, which includes the right

### **Slavery, servitude and forced labour**

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

### **Privacy**

14. Everyone has the right to privacy, which includes the right not to have

### **Freedom of religion, belief and opinion**

15. (1) Everyone has the right to freedom of conscience, religion, thought, belief and opinion.

(2) Religious observances may be conducted at state or state-aided institutions, provided that

(3)

i marriages concluded under any tradition, or a system of religious, personal or family law; or

ii systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.

### **Freedom of expression**

16. (1) Everyone has the right to freedom of expression, which includes

(2) The right in subsection (1) does not extend to

### **Assembly, demonstration, picket and petition**

17. Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.

### **Freedom of association**

18. Everyone has the right to freedom of association.

### **Political rights**

19. (1) Every citizen is free to make political choices, which includes the right

(2) Every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution.

(3) Every adult citizen has the right

### **Citizenship**

20. No citizen may be deprived of citizenship.

### **Freedom of movement and residence**

21. (1) Everyone has the right to freedom of movement.

(2) Everyone has the right to leave the Republic.

(3) Every citizen has the right to enter, to remain in and to reside anywhere in, the Republic.

(4) Every citizen has the right to a passport.

### **Freedom of trade, occupation and profession**

22. Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.

### **Labour relations**

23. (1) Everyone has the right to fair labour practices.

(2) Every worker has the right

(3) Every employer has the right

(4) Every trade union and every employers' organisation has the right

(5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).

(6) National legislation may recognise union security arrangements contained in collective agreements. To the extent

that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).

## **Environment**

24. Everyone has the right

- i prevent pollution and ecological degradation;
- ii promote conservation; and
- iii secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

## **Property**

25. (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

(2) Property may be expropriated only in terms of law of general application

### **or in the public interest; and**

(3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including

(4) For the purposes of this section

(5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.

(6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of

Parliament, either to tenure which is legally secure or to comparable redress.

(7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.

(8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).

(9) Parliament must enact the legislation referred to in subsection (6).

## **Housing**

26. (1) Everyone has the right to have access to adequate housing.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

(3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

## **Health care, food, water and social security**

27. (1) Everyone has the right to have access to

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

(3) No one may be refused emergency medical treatment.

## **Children**

28. (1) Every child has the right

- i are inappropriate for a person of that child's age; or
  - ii place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
- i kept separately from detained persons over the age of 18 years; and
- ii treated in a manner, and kept in conditions, that take account of the child's age;

(2) A child's best interests are of paramount importance in every matter concerning the child.

(3) In this section "child" means a person under the age of 18 years.

## **Education**

29. (1) Everyone has the right

(2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account

(3) Everyone has the right to establish and maintain, at their own expense, independent educational institutions that

(4) Subsection (3) does not preclude state subsidies for independent educational institutions.

## **Language and culture**

30. Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.

### **Cultural, religious and linguistic communities**

31. (1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community

(2) The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

### **Access to information**

32. (1) Everyone has the right of access to

(2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

### **Just administrative action**

33. (1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

(2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

(3) National legislation must be enacted to give effect to these rights, and must

### **Access to courts**

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

### **Arrested, detained and accused persons**

35. (1) Everyone who is arrested for allegedly committing an offence has the right

- i of the right to remain silent; and
- ii of the consequences of not remaining silent;
- i 48 hours after the arrest; or
- ii the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day;

(2) Everyone who is detained, including every sentenced prisoner, has the right

- i spouse or partner;
- ii next of kin;
- iii chosen religious counsellor; and
- iv chosen medical practitioner.

(3) Every accused person has a right to a fair trial, which includes the right

(4) Whenever this section requires information to be given to a person, that information must be given in a language that the person understands.

(5) Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.

### **Limitation of rights**

36. (1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic

society based on human dignity, equality and freedom, taking into account all relevant factors, including

(2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

### **States of emergency**

37. (1) A state of emergency may be declared only in terms of an Act of Parliament, and only when

(2) A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, may be effective only

(3) Any competent court may decide on the validity of

(4) Any legislation enacted in consequence of a declaration of a state of emergency may derogate from the Bill of Rights only to the extent that

i is consistent with the Republic's obligations under international law applicable to states of emergency;

ii conforms to subsection (5); and

iii is published in the national Government Gazette as soon as reasonably possible after being enacted.

(5) No Act of Parliament that authorises a declaration of a state of emergency, and no legislation enacted or other action taken in consequence of a declaration, may permit or authorise

### **Table of Non-Derogable Rights**

1 Section Number	2 Section Title	3 Extent to which the right is protected
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9	Equality	With respect to unfair discrimination solely on the grounds of race, colour, ethnic or social origin, sex religion or language
10	Human Dignity	Entirely
11	Life	Entirely
12	Freedom and Security of the person	With respect to subsections (1)(d) and (e) and (2)(c).
13	Slavery, servitude and forced labour	With respect to slavery and servitude
28	Children	With respect to: <ul style="list-style-type: none"> <li>∅ subsection (1)(d) and (e);</li> <li>∅ the rights in subparagraphs (i) and (ii) of subsection (1)(g); and</li> <li>∅ subsection 1(i) in respect of children of 15 years and younger</li> </ul>
35	Arrested, detained and accused persons	With respect to: <ul style="list-style-type: none"> <li>∅ subsections (1)(a), (b) and (c) and (2)(d);</li> <li>∅ the rights in paragraphs (a) to (o) of subsection (3),</li> </ul>

		<p>excluding paragraph (d)</p> <p>Ø subsection (4); and</p> <p>Ø subsection (5) with respect to the exclusion of evidence if the admission of that evidence would render the trial unfair.</p>
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(6) Whenever anyone is detained without trial in consequence of a derogation of rights resulting from a declaration of a state of emergency, the following conditions must be observed:

(7) If a court releases a detainee, that person may not be detained again on the same grounds unless the state first shows a court good cause for re-detaining that person.

(8) Subsections (6) and (7) do not apply to persons who are not South African citizens and who are detained in consequence of an international armed conflict. Instead, the state must comply with the standards binding on the Republic under international humanitarian law in respect of the detention of such persons.

### **Enforcement of rights**

38. Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are -

### **Interpretation of Bill of Rights**

39. (1) When interpreting the Bill of Rights, a court, tribunal or forum

(2) When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.

(3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill.