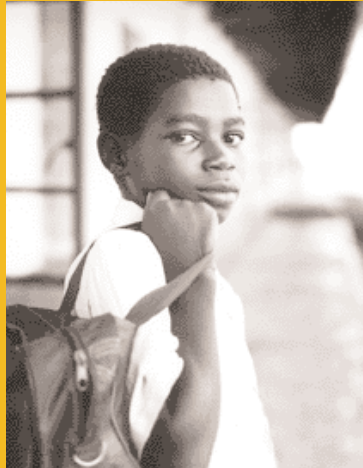


# SOCIO-ECONOMIC RIGHTS



Know your rights

He is seven years old, he has a plaster cast on his fractured arm, and he walks 45 – 60 minutes to school.



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# The purpose of the booklet

**The purpose of this booklet is to inform ordinary South Africans on:**

- What their economic and social rights in the Constitution, Act 108 of 1996
- What these rights entail (meaning and content)
- What are the obligations of the State and non-State entities in terms of these rights
- What constitutes a violation of these rights
- What remedies available for such violations
- How these remedies could be accessed and/or availed

# Types of Rights

**Human rights are claims that every human being is entitled to, in order to live a peaceful, free and happy life. Human rights have traditionally been characterised into civil and political rights, and socio-economic rights.**

However this separation does not mean that some rights are more important than others. All rights are fundamental, universal, equally important for all human beings and cannot be separated from each other.

The satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights. (*See the case Government of SA and others v Grootboom and Other*).

## Civil & Political Rights

These are:

- Equality
- Human dignity
- Freedom of security of person
- Privacy
- Freedom of religion, belief and opinion
- Freedom of expression
- Assembly, demonstration, picket and petition
- Freedom of association
- Political rights
- Citizenship
- Freedom of movement
- Freedom of trade, occupation and profession
- Labour rights


## Social & Economic Rights

These are:

- Right to education
- Right to food
- Right to health
- Right to land
- Right to water
- Environmental Rights
- Right to social security
- Right to housing



# Right to Education



She walks between 45 – 60 minutes to Simekweni Junior Secondary School, Eastern Cape.

**The right to education is found in section 29 of the Constitution**

**Section 29 provides that every one has the right:**

- to basic education which includes adult basic education
- to further education, which the State, through reasonable measures, must progressively make it available and accessible
- to receive education in an official language or language of your choice in the public educational institution, if this can be possible
- to establish and maintaining, at own expense, and independent educational institution.

Basic education is defined in the South African Schools Act of 1996 to mean that all children between 7 and 15, or in grade 1 to 9 must receive compulsory education. A child refers to a person under the age of 18.

Basic education means no one may be refused basic education because he/she cannot afford school fees. Basic education must be of a reasonable standard. The State is obliged to make sure that every one receives basic education.

The right to adult basic education presents an opportunity for people who were unable to receive education in the past and are now beyond school going age to get basic education.

The right to further education includes education from grade 10 to 12, education focusing on skills for jobs and tertiary education.

The State must make sure that the right to further education and tertiary education is progressively fulfilled.

Individuals or groups are allowed to set up and maintain independent educational institutions. The State can

choose to fund or not to fund such institutions.

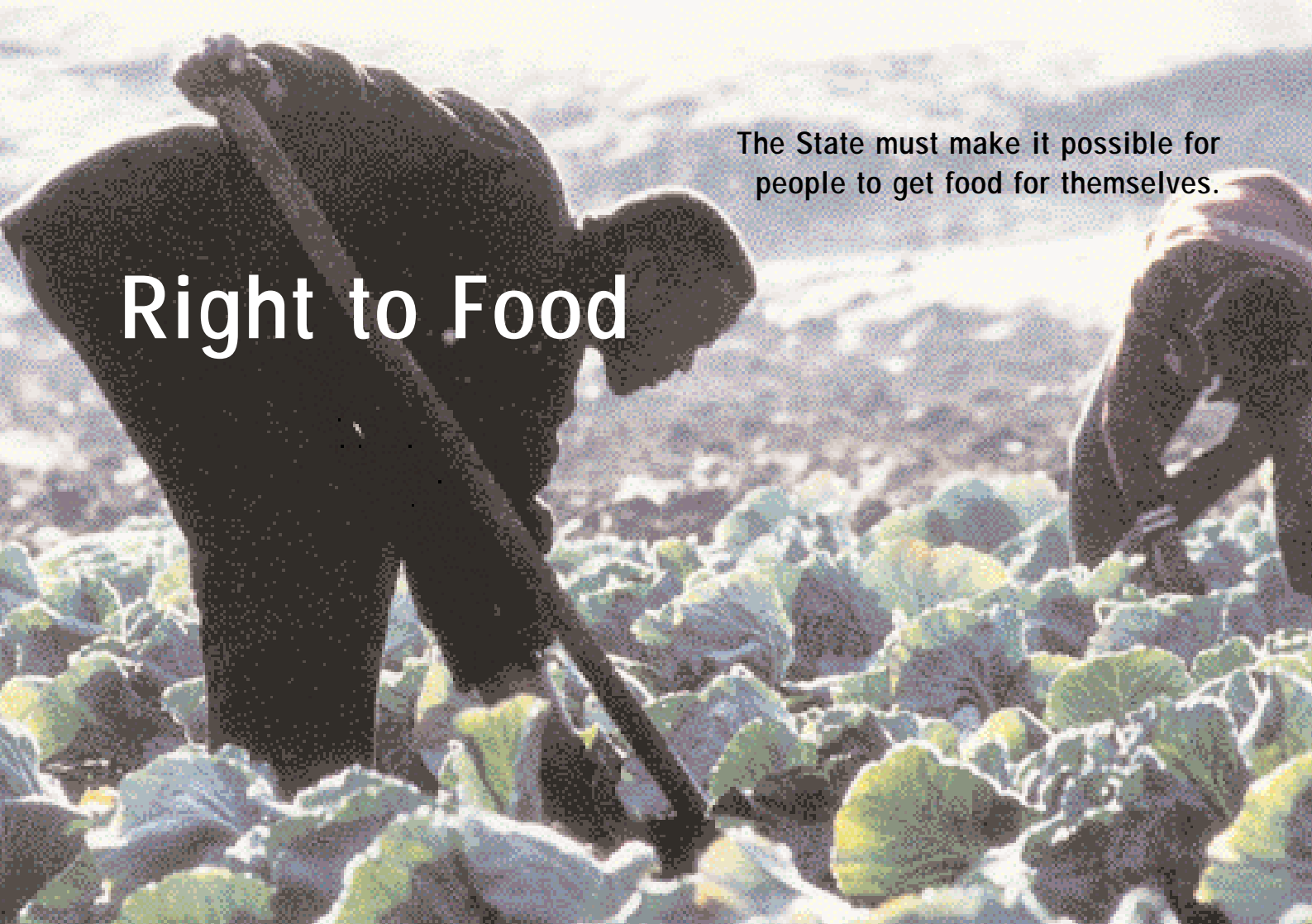
**The Constitution says that such institutions must follow the following rules:**

- they should not discriminate on basis of race
- they must be registered with the State
- they must maintain standards that are not lower than standards applied in public educational schools.

Prisoners also have a right to education. The international human rights law also gives this right. This means, the State must respect, protect, promote and fulfil the right to education for prisoners.

*The floor of the classroom is plastered with mud. The floor has crumbled to such an extent that it has turned to dust.*





# Right to Food

The State must make it possible for people to get food for themselves.



## The right to food is found in section 27(1)(b), 28(11)(c) and 35(2)(e) of the Constitution.

### Right to food includes:

- the right for every one to have access to sufficient food
- the right to basic nutrition for children
- the right of everyone who is detained, including every sentenced prisoner to adequate nutrition at State expense.

Sufficient food means that everyone must have access to enough amount of food in order not to get hungry. Food must also be of acceptable quality and be safe for everyone to live a healthy and dignified life.

In other words, food must have enough calories, proteins, irons, fats, carbohydrates, minerals and vitamins. Safety of food means that the food must be fresh and free from harmful substances.

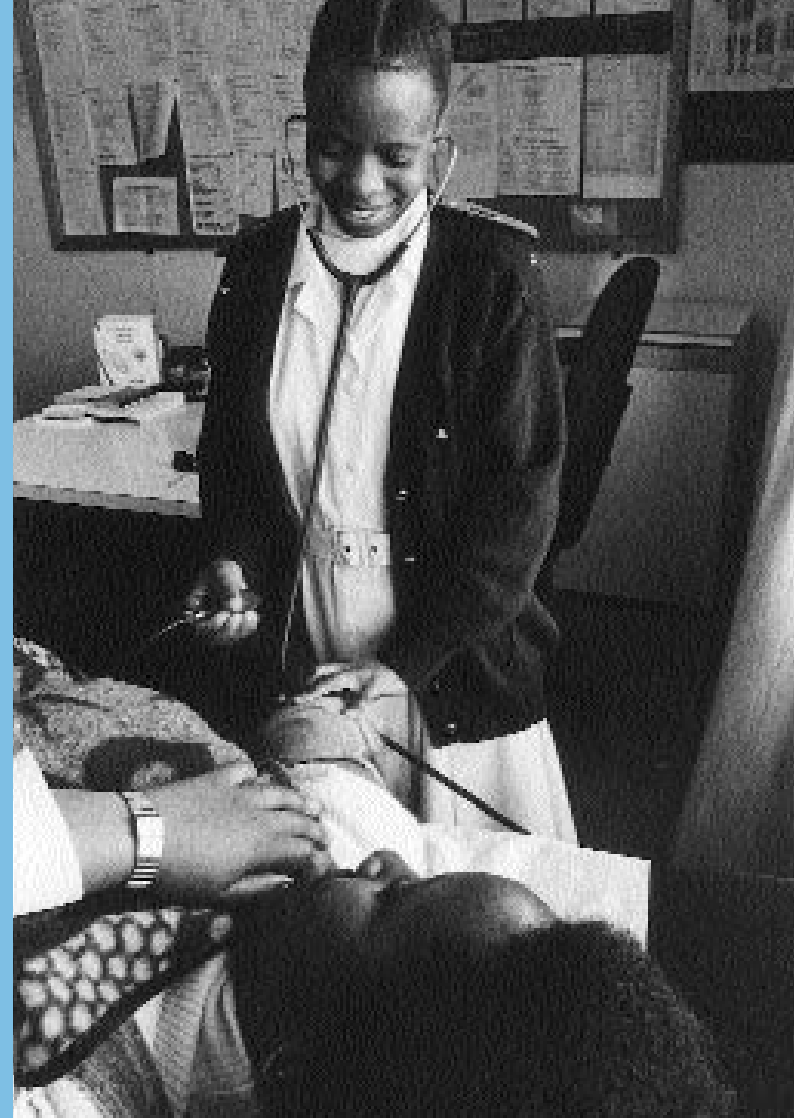
Access to sufficient food does not mean that the State always has to give everyone food, but the State must make it possible for people to get food for themselves. This may be done by subsidising food costs, providing

employment, fulfilling other rights like land, creating opportunities for people to know how to use food nutritiously and store food safely.

However the government has to provide food where people are unable to provide food for themselves.

The right to basic nutrition for children means that parents have the first responsibility to ensure that their children get basic nutrition. However if they are not able to do so, the State must provide such nutrition.

# Right to Health



## Health rights are found in sections 27(1), 28(1), 24(a) and 35 of the Constitution.

The health care rights including reproductive health care, in section 27(1) mean that every human being has the right to enjoy certain types of health facilities, goods, services and conditions that are suitable for living life with dignity.

In the event of sickness – both physically and mentally, no one may be refused access to health care or emergency medical treatment on grounds of race, colour, sex, language, religion, social origin, physical or mental disability, health status (including HIV/Aids) and sexual orientation.

### The minimum importance in the area of health rights includes:

- ensuring the right of access to health care facilities, goods and services on a non-discriminatory basis especially to vulnerable groups
- ensuring access to minimum essential food which is sufficient, nutritionally adequate and safe, to ensure freedom from hunger for everyone

- ensuring access to basic shelter, housing and sanitation and an adequate supply of safe and portable water
- providing essential drugs
- appropriate treatment of prevalent disease (eg HIV/Aids, TB), illnesses, injuries and disabilities
- appropriate mental health treatment and care
- emergency medical treatment.

Although people are entitled to health rights, it does not mean that people have a right to any kind of medical treatment free of charge.

But the kind of treatment depends on the health care resources available to the State to progressively fulfil the right and the nature of sickness.

At least everyone should have access to primary and preventative health care services.



*The mother is helping the nurse to apply the cast onto the boy's fractured arm.*

### **Primary health care includes:**

- provision of essential drugs
- appropriate treatment of common diseases and injuries
- education on health problems and methods of preventing and controlling them
- immunisation against major infectious diseases
- adequate supply of safe water and sanitation
- promotion of an adequate food supply and nutrition.

**Section 27 (3) of the Constitution** says that no one may be refused emergency medical treatment, except if the limitation is reasonable and justifiable. Emergency medical treatment refers to a treatment for a person suffering from a “sudden catastrophe” that calls for immediate medical attention.

Such person should not be refused ambulance or other emergency services which are available and should not be turned away from a hospital which is able to provide necessary treatment.

The right to basic health care for children which is provided for in **section 28(1)(c)** of the Constitution refers to services aimed at, amongst other things, at reducing infant mortality, childhood illnesses, malnutrition amongst children and providing care to mothers during and after pregnancy and clean drinking water. **Section 24(a)** deals with the right for everyone to an environment that is not harmful to their health and well-being.

On prisoners, **section 35** of the Constitution says that everyone who is detained, including every sentenced prisoner, has rights to conditions that are consistent with human dignity, including exercise, adequate nutrition, medical treatment at state expense. They also have a right to communicate with medical practitioners of their choice.

*left: It is now 17h35. This woman is going to sleep on the bench with her daughter in order to see the doctor the following day.*

*right: In this hospital, used gauze and cotton wool is thrown into this uncovered bin. Some tablets are lying on the floor.*



# Right to Land



## Land rights are dealt with in section 25 of the Constitution.

Land rights mean that every one can own land. Section 25(1) and (2) states that:

- no one may be deprived of property except if there is law which applies to the general public and that law does not permit arbitrary deprivation of property
- property may be expropriated only in terms of law:
  - for a public purpose or in the public interest
  - subject to compensation which shall either be agreed to by those affected or decided and approved by a court.

This means that, if one's land is taken away, that person must be compensated at the amount agreed to by him or her and the other party affected or which shall be decided and approved by a court.

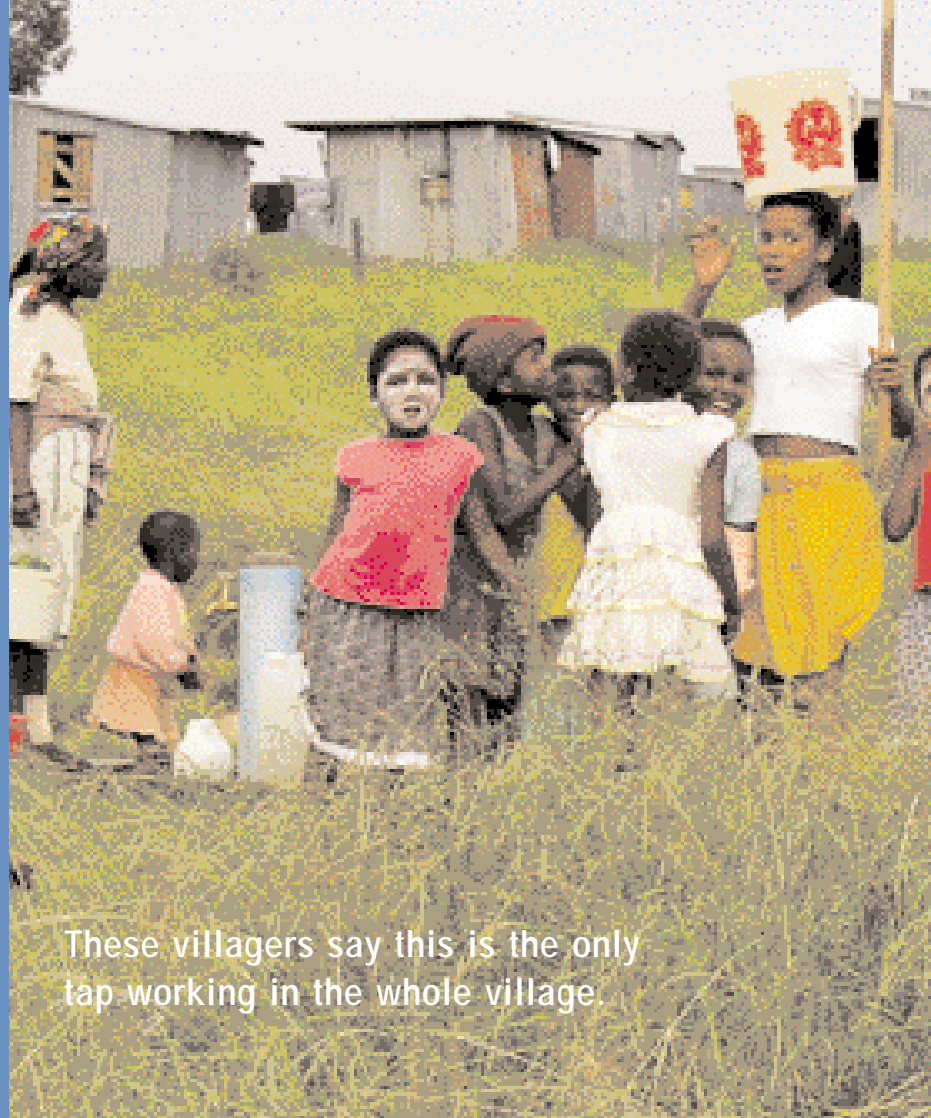
**Section 25(5)** deals with equitable access to land. The section requires the State to take reasonable steps to create conditions that will make it possible for citizens to gain access to land on equitable basis.

**Section 25(6)** addresses security of tenure.

Parliament has made laws that promote security of

tenure or that provide security of tenure for communities whose tenure is insecure (Security of tenure Act of 1997). **Section 25(7)** deals with restitution of land. According to this section, persons or communities, who lost the land after 1913 as a result of past discriminatory laws or practices, can claim back their land or fair and reasonable compensation.

# Right to Water



These villagers say this is the only tap working in the whole village.



## Right to water is dealt with in section 27(1)(b) of the constitution.

**This section provides a right for everyone to have access to sufficient water.**

Sufficient water refers to the quantity and quality of water. The amount of water must be enough to satisfy the domestic needs. Water should be free from harmful substances such as toxins, bacteria and other harmful substances. This is important, because safe drinking water is an essential part of the human diet and is necessary for survival.

Access to water refers to economic and physical accessibility of water. Physical accessibility means that water should be available within a distance accessible to everyone including vulnerable individuals such as children, elderly persons and people with disabilities. In other words people should not walk long distances in order to get water.

Economic access refers to the financial costs associated with accessing of water. The costs for water should not be unreasonably expensive that people cannot afford it.





# Environmental Rights

## Environmental rights are found in section 24 of the Constitution.

**This section says that, everyone has a right to:**

- an environment that is not harmful to his or her health or well being; and
- have environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that:
  - prevent pollution and ecological degradation
  - promote conservation and
  - secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

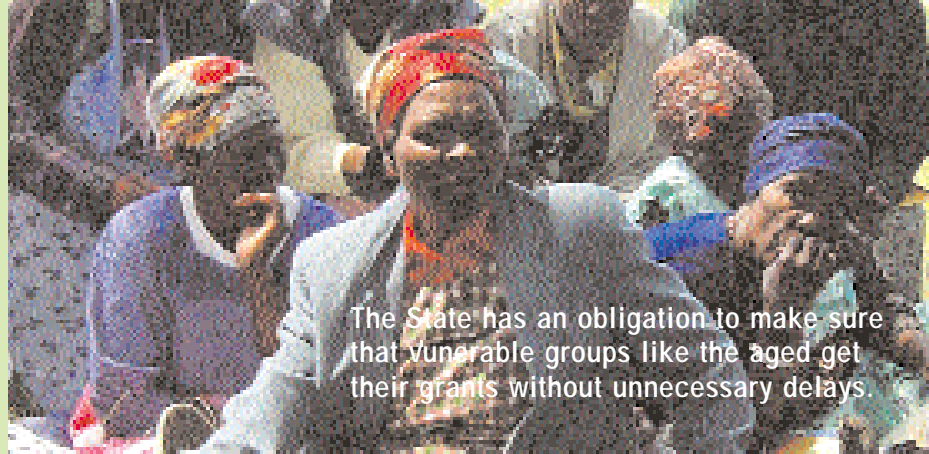
Environment refers to everything in our physical surroundings. These include, natural surroundings such as rivers, air, plants, forests; and the built environment in towns and cities.

Environment that is harmful to health and well being of human beings also includes conditions where the

communities have no toilets, no water and no sanitation. Placing majority of hazardous or polluting industries in poor communities also results into environmental pollution. The environmental rights of these communities are being interfered with. Prevention of pollution means that the State must take reasonable measures to prohibit the pollution of the environment and address the consequences of it.



# Right to Social Security



The State has an obligation to make sure that vulnerable groups like the aged get their grants without unnecessary delays.

**Social security rights are found in section 27(1)(c) and section 28(1)(c) of the Constitution.**

Section 27(1)(c) says that everyone has the right to have access to social security, including if they are unable to support themselves and their dependants, appropriate social assistance.

Like in all human rights, international human rights law prohibits racial discrimination in the enjoyment of the right to social security. It requires that the right to social security and social assistance be provided to women without discrimination and emphasizes that the aged and the disabled should have the right to special measures of protection in keeping with their physical needs. International human rights law has spelt out what the State has to do for the identified vulnerable groups.

## **The State must:**

- take appropriate measures to establish systems of compulsory old age insurance, starting at a particular age
- establish a retirement age that is flexible, depending on the occupation performed and the working ability of elderly persons, taking into account, demographic, social and economic factors
- guarantee the provision of survivors' and orphans' benefits on the death of the breadwinner who was covered by social security, or receiving a pension
- institute old age benefits or other assistance for all persons, regardless of their sex.

Rights for Children on basic social services are found in **section 28(1)(c)** of the Constitution. Social services for children in **Section 28(1)(c)** include those services that:

- protect children from physical and mental violence, injury or abuse; protecting and assisting children temporarily or permanently separated from their families
- assist children with mental and physical disabilities; protecting children from economic exploitation, drug abuse and sexual exploitation
- promote the recovery and social acceptance of children from abuse.

Social security covers all risks involved in the loss of means of subsistence for reasons beyond a person's control. It includes:

- social assistance for people who are not able to support themselves and their dependants
- ways of providing benefits to people with disabilities.

The current forms of social security in South Africa are:

- **Old age pensions:** payable to women who are 60 years and older, and to men who are 65 years and older

- **Disability grants:** payable to people who are 18 years and older who are disabled for six months and more, who cannot support themselves because of the nature of their disability and other reasons. For disabled children who are below 18, their grant is called a **care dependency grant**
- **War veterans grants:** paid to people from the age of 60 and older, who once served in the South African army during certain wars, such as the Anglo-Boer War (1899 – 1902), the Zulu uprising (1906), the First World War (1914 – 1918), the Second World War (1939 – 1945) or the Korean War (1950 – 1953) and those involved in the liberation movements of MK and APLA, who are unable to maintain themselves due to physical and/or mental disability
- **Child support grants:** payable to a primary caregiver who cares for a child or children (up to a maximum of 6 children) who are under the age of seven. The caregiver can be the mother, father, grandparent, relative, friend or other, of the child or children
- **Foster child grants:** Paid for a child or children who are placed in the care of a person who is not a parent, such as the grandparent.

# Right to Housing



Right to housing is found in section 26, 28(1)(c) and 35(2)(e) of the Constitution.

**Section 26(1)** addresses the right of access to adequate housing for everyone. It states that everyone has the right to have access to adequate housing.

It also deals with the security of tenure. It states that no one should be evicted from their homes or have their homes destroyed, without an order of court, after considering all relevant circumstances. There should be no legislation, which allows unfair evictions.

**Section 28(1)(c)** states that every child has the right to basic nutrition and shelter. **Section 35(2)(e)** provides for everyone who is detained, including every sentenced prisoner, the right to adequate accommodation at State expense.

**Adequate housing means the following:**

- legal security against arbitrary forced evictions, harassment and other threats
- housing costs should not be so high that the attainment of other basic needs is compromised
- tenants should also be protected against unreasonable rent increases
- adequate housing should contain facilities essential for health, security, comfort and nutrition
- adequate space and protection against the cold, damp, heat, rain, and/or other threats to health
- appropriate access to employment opportunities, health care services, schools, and other social facilities.

The primary duty to provide shelter for children is imposed primarily on the parents or family. However the State must adopt appropriate measures to enable parents to provide the necessary shelter. In the event of parents or family not able to do so, the State is obliged to take responsibility and provide shelter for children and their parents until their parents can afford housing.

*NB: for more detailed information on the description and other provisions on all these rights, you can visit the SAHRC reports on Social and Economic Rights, Government departments and political websites.*





# Obligations of the State

**Section 7(2) of the Constitution puts four different types of obligations on the State. This section says that the State must respect, protect, promote and fulfil the rights in the Bill of Rights.**

An obligation to *respect* requires the State to refrain from interfering with the enjoyment of rights. This means that if there is already an enjoyment of a human right, the State must not take any measures that will result in preventing such enjoyment. For example, on the right to housing, the State must not engage on unfair forced evictions.

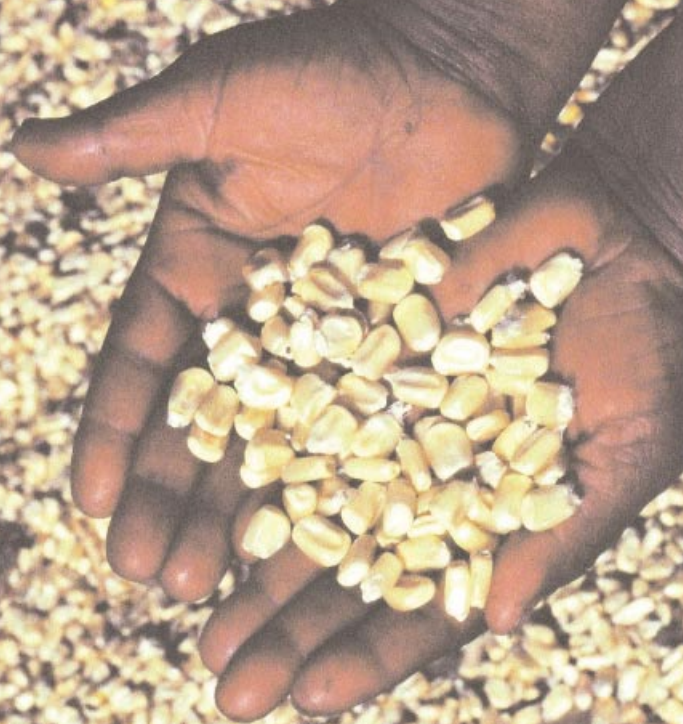


An obligation to *protect* requires the State to prevent violations of such rights by third parties.

An obligation to *promote* requires the State to inform people of their rights and explain how they can enjoy these rights. This includes activities such as workshops, seminars, and publications in the written media and other media such as radio and television.

An obligation to *fulfil* requires the State to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realisation of such rights.

In [sections 27\(2\), 26\(2\), 29\(1\)\(b\), 25\(5\)](#) of the Constitution the State is obliged to take reasonable legislative and other measures, within its available resources, to achieve progressive realisation of these rights.



### **Progressive realisation of social and economic rights means that:**

- The State must move as soon as possible towards the realisation of the rights
- The State does not, under any circumstances have the right to suspend indefinitely, efforts to ensure the full realisation of the rights
- The State has an obligation to begin immediately to take steps to fulfil its obligations to realise the rights
- The realisation of the rights requires an effective utilisation of available resources and such realisation is not dependent on the increase in resources

Obligations of the State to respect, protect and promote should not be progressively realised based on the available resources.

For example, an obligation to respect requires the State to immediately refrain from interfering enjoyment of rights. An obligation to protect requires the State to immediately take positive measures that prevent third parties from interfering with enjoyment of rights. These should not depend on whether the State has adequate resources or not.

An obligation to fulfil requires the State to adopt appropriate measures towards the full realisation of rights. Therefore, they may not be fulfilled immediately without the availability of resources.



# Roles for different bodies

**The following State Institutions strengthen constitutional democracy in the republic:**

- The Public Protector
- The South African Human Rights Commission
- The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities
- The Commission for Gender Equality
- The Auditor-General
- The Electoral Commission

## South African Human Rights Commission

The South African Human Rights Commission (SAHRC) is one of the State institutions in Chapter 9 of the Constitution of 1996, whose core functions in terms of section 184(1) of the Constitution are:

- to promote respect for human rights and a culture of human rights
- to monitor and assess the observance of human rights
- to promote the protection, development and attainment of human rights in South Africa.

### **The powers of the SAHRC in section 184(2) are:**

- to investigate and report on the observance of human rights
- to secure appropriate redress where human rights have been violated
- to carry out research and educate
- to raise awareness of human rights
- to request relevant organs of the State to submit reports on an annual basis on measures that they

have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, land, education and the environment.

## Public Protector

**This is one of the chapter 9 institutions in the Constitution. The functions of the Public Protector are:**

- to investigate complaints on conducts of bad administration, corruption, abuse of power, unfair behaviour and unreasonable delays when performing their public function against government officials
- to report and make recommendations to Parliament on the above investigations
- to take remedies on complaints reported.

If the conduct of a government official leads to an interference with the enjoyment of economic and social rights, one can approach the Public Protector and lay a complaint.

## Public Service Commission

**The Public Service Commission was established in terms of chapter 10 of the 1996 Constitution.**

**The functions of the Commission are to:**

- promote and maintain values and principles including:
  - high standard of professional ethics
  - efficient economic and effective use of resources
  - provision of services impartially, fairly, equitably and without bias
  - encouragement of public participation in policy making and immediate response to people's needs
  - public administration, which is broadly representative of South African people
  - cultivation of good human resource management and career development practices, to maximise human potential
- investigate complaints against public administration practices, monitor and evaluate the organisation and

administration, the personnel practices, of the public service

- propose measures to ensure effective and efficient performance within the public services
- report and give directions aimed at ensuring that personnel procedures relating to recruitment, transfers, promotions and dismissals comply with the values and principles set out in bullet point one above.

## Courts

Courts play a very important role in the interpretation and enforcement of economic and social rights. Lawyers, judges, adjudicators, bar associations and the legal community in general should, as much as reasonably necessary, pay more attention to the violation of these rights in their professions.

In terms of their professional obligation, lawyers have a very important role to play in the adequate protection of human rights and fundamental freedoms by providing legal services to victims of human rights violations and cooperating with governmental and other institutions in promoting justice and general interests of the public.



## Organs of Civil Societies

Non-governmental organisations have an important role in the promotion of all human rights at national, regional and international levels.

### The NGO's contribute in:

- Increasing public awareness of human rights issues
- Conducting of education, training and research in the field of human rights
- Promoting and protection of all human rights and fundamental freedoms
- Continuing dialogue and cooperation between governments and non-governmental organisations.

Civil society and its organisations can also play a role in the monitoring of economic and social rights through a SHADOW REPORT. A shadow report would give NGO's and CBO's an opportunity to submit an independent report to the SAHRC on real life problems that people experience in getting access to economic and social rights. Any one can contribute to the monitoring process of economic and social rights, by linking up with an NGO or CBO or trade union working on economic and social rights and submit information and comments to the SAHRC.



# Violation of social and economic rights

The violation of social and economic rights occurs when the State fails to meet its obligations required by the national legislation and international human rights law.



### **The State is in violation of the economic and social rights if:**

- it fails to take measures required for the promotion and protection of economic and social rights
- it fails to remove promptly obstacles which it is under duty to remove in order to allow immediate fulfilment of a right
- it fails to implement without delay a right which it is required to provide immediately
- it wilfully fails to meet an accepted minimum standard of achievement, which is within its powers to meet
- it deliberately retards or halts the progressive realization of a right, unless it is acting within a limitation permitted or due to a lack of available resources
- it fails to submit reports as required under the Constitution and international human rights law.

### **Remedies on violation of economic and social rights**

Any person or group whose economic and social rights have been violated is entitled to have adequate

reparation either through judicial remedies or other appropriate remedies.

The courts have been given recognition as effective judicial bodies to provide relief upon the violation of economic and social rights.

Other appropriate remedies mean that people can also approach institutions such as the South African Human Rights Commission (either by phoning, fax, or visit its offices), the Public Protector, and NGOs that are working on economic and social rights and the media.

A person or group can approach one of the bodies and seek relief depending on the circumstances of each case.

### **The remedies may take a form of:**

- rehabilitation
- satisfaction or guarantees of non-repetition
- mediation
- arbitration
- restitution
- compensation



# Definition of terms used

## The Constitution

- This is the highest law of the country
- It sets out how the government is made up, how it should function and how it should relate to the people
- It provides for the rights of the people
- It prohibits conducts that go against its provision
- The obligations imposed by the Constitution must be fulfilled.

## The Bill of Rights

This is the list of human rights, which every human being has. It is found in chapter two of the Constitution.

The Bill of Rights applies to all laws and binds the legislature, the executive, the judiciary and all organs of the State. A provision of the Bill of Rights binds the natural and the juristic person to the extent applicable in the Constitution.

## International human rights law

These are binding agreements and practices on human rights between States that are mainly passed through the UN in the form of treaties.

## Contact details

### South African Human Rights Commission

**Head Office – Johannesburg:** Private Bag 2700,  
Houghton 2041, Johannesburg, South Africa  
Tel: +27 11 484-8300 Fax: +27 11 484-1360

**Free State:** PO Box 4245, Bloemfontein, 9300  
Tel: 051 447-1130 Fax: 051 447-1128

**Eastern Cape:** PO Box 1854, Port Elizabeth 6001  
Tel: 041 582-2611/4094 Fax: 041 582-2204

**Limpopo :** PO Box 55796, Pietersburg 0700  
Tel: 015 291-3500/3504 Fax: 015 291-3505

**KwaZulu-Natal :** PO Box 1456, Durban 4000  
Tel/Fax: 031 304-7323/4/5

**Western Cape:** PO Box 3563, Cape Town 8000  
Tel: 021 426-2277 Fax: 021 426-2875  
Email: sahrinfo@sahrc.org.za

### The Public Protector

**Head Office – Tshwane:** Private Bag x 677, Pretoria 0001  
Tel 012 3222916 Fax: 012 3225093

**Mpumalanga:** PO Box 3373, Nelspruit 1200  
Tel: 013 752 8543 Fax: 013 752 7883

**North West:** PO Box 512, Mafikeng 8670  
Tel: 018 3811060/1/2 Fax: 018 381 2066

**Western Cape:** PO Box 712, Cape Town 8000  
Tel: 021 423 8644; Fax: 021 423 8708

**KwaZulu-Natal :** PO Box 4267, Durban 4000  
Tel: 031 307 5300 Fax: 031 307 2424

**Free State:** PO Box 383, Bloemfontein 9300  
Tel: 051 448 6172 Fax: 051 448 6070

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**Northern Cape:** PO Box 1505, Kimberly 8300  
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