

1/3/3/2/14

CHAPTER 3

FUNDAMENTAL HUMAN RIGHTS

Application

7. (1) This Chapter shall bind the legislative and executive organs of the State at all levels of government including all statutory bodies and functionaries.
- (2) This Chapter shall apply to all law in force and all administrative decisions taken and acts performed during the period of operation of this Chapter.
- (3) Juristic persons shall be entitled to the rights contained in this Chapter where, and to the extent that, the nature of the rights permits.
- (4) (a) When an infringement of or threat to any right entrenched in this Chapter is alleged, any person referred to in paragraph (b) shall be entitled to apply to a competent court of law for appropriate relief, which may include a declaration of rights.
(b) An application referred to in paragraph (a) may be brought by -
 - (i) a person acting in his or her own interest;
 - (ii) an association acting in the interest of its members;
 - (iii) a person acting on behalf of another person who is not in a position to bring such application in his or her own name;
 - (iv) a person acting as a member of or in the interest of a group or class of persons; or
- (v) a person acting in the public interest.

Equality

- 8. (1)** Every person shall have the right to equality before the law and to equal protection of the law.
- (2) No person shall be unfairly discriminated against, directly or indirectly, and, without derogating from the generality of this provision, on one or more of the following grounds in particular: race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language.
- (3) (a) This section shall not preclude measures designed to achieve the adequate protection and advancement of persons or groups or categories of persons disadvantaged by unfair discrimination in order to enable their full and equal enjoyment of all rights and freedoms.
- (b) Every person or community dispossessed of rights in land before the commencement of this Constitution under any law which would have been inconsistent with the provisions of subsection (2) shall be entitled to claim restitution of such rights subject to and in accordance with Chapter
- (4) Prima facie proof of discrimination on any of the grounds specified in subsection (2) shall be presumed to be sufficient proof of unfair discrimination as contemplated in that subsection until the contrary is established.

Life

- 9.** Every person shall have the right to life.

Human dignity

10. Every person shall have the right to respect for and protection of his or her dignity.

Freedom and security of the person

11. (1) Every person shall have the right to freedom and security of the person which shall include the right not to be detained without trial.
- (2) No person shall be subject to torture of any kind, whether physical, mental or emotional, nor shall any person be subject to cruel, inhuman or degrading treatment or punishment.

Servitude and forced labour

12. No person shall be subject to servitude or forced labour.

Privacy

13. Every person shall have the right to his or her personal privacy which shall include the rights not to be subject to searches of his or her person, home or property, the seizure of private possessions or the violation of private communications.

Religion, belief and opinion

14. (1) Every person shall have the right to freedom of conscience, religion, thought, belief and opinion, which shall include academic freedom in institutions of higher learning.
- (2) Without derogating from the generality of subsection (1), religious observances may be conducted at state or state-aided institutions under rules established by an appropriate authority for that purpose,

provided that such observances are conducted on an equitable basis and attendance at them is free and voluntary.

- (3) Nothing in this section shall preclude legislation recognising -
 - (a) personal and family law under religion, and
 - (b) the validity of marriages concluded under religious law subject to specified procedures.

Freedom of expression

- 15. (1) Every person shall have the right to freedom of speech and expression, which shall include freedom of the press and other media, and the freedom of artistic creativity and scientific research.
- (2) All media financed by or under the control of the state shall be regulated in a manner which ensures impartiality and the expression of a diversity of opinion.

Assembly, demonstration and petition

- 16. Every person shall have the right to assemble and demonstrate with others peacefully and unarmed, and to present petitions.

Freedom of association

- 17. Every person shall have the right to freedom of association.

Freedom of movement

- 18. Every person shall have the right to freedom of movement anywhere within South Africa.

Residence

- 19.** Every person shall have the right freely to **choose** his or her **place** of residence anywhere in South Africa.

Citizens' rights

- 20.** Every citizen shall have the right to enter, remain in and leave South Africa, and no citizen shall be deprived of his or her citizenship.

Political rights

- 21. (1)** Every citizen shall have the right -
- (a) to form, to participate in the activities of and to recruit members for a political party;
 - (b) to campaign for a political party or cause; and
 - (c) freely to make political choices.
- (2)** Every citizen shall have the right to vote, to do so in secret and to stand for election to public office.

Access to court

- 22.** Every person shall have the right to have justiciable disputes settled by a court of law or, where appropriate, another independent and impartial forum.

Access to information

- 23.** Every person shall have the right of access to all information held by the state or any of its organs at any level of government in so far as such information is required for the protection or exercise of any of his or her rights.

Administrative justice

- 24.** Every person shall have the right to -
- (a) lawful administrative action where any of his or her rights or interests is affected or threatened;
 - (b) procedurally fair administrative action where any of his or her rights or legitimate expectations is affected or threatened;
 - (c) be furnished with reasons in writing for administrative action which affects any of his or her rights or interests unless the reasons for such action have been made public; and
 - (d) administrative action which is justifiable in relation to the reasons given for it where any of his or her rights is affected or threatened.

Detained, arrested and accused persons

- 25. (1)** Every person who is detained, including every sentenced prisoner, shall have the right -
- (a) to be informed promptly in a language which he or she understands of the reason for his or her detention;
 - (b) to be detained under conditions consonant with human dignity, which shall include at least the provision of adequate nutrition, reading material and medical treatment at state expense;

- (c) to consult with a legal practitioner of his or her choice, to be informed of this right promptly and, where substantial injustice would otherwise result, to be provided with the services of a legal practitioner by the state;
- (d) to be given the opportunity to communicate with, and to be visited by, his or her spouse or partner, next-of-kin, religious counsellor and a medical practitioner of his or her choice; and
- (e) to challenge the lawfulness of his or her detention in person before a court of law and to be released if such detention is unlawful.

(2) Every person arrested for the alleged commission of an offence shall, in addition to the rights which he or she has as a detained person, have the right -

- (a) in a language which he or she understands, to be informed promptly that he or she has the right to remain silent and to be warned of the consequences of making any statement;
- (b) as soon as it is reasonably possible, but not later than 48 hours after the arrest or the first court day thereafter, to be brought before an ordinary court of law and to be charged or to be informed of the reason for his or her further detention, failing which he or she shall be entitled to be released;
- (c) not to be compelled to make a confession or admission which could be used in evidence against him or her; and
- (d) to be released from detention with or without bail, unless the interests of justice require otherwise.

(3) Every accused person shall have the right to a fair trial., which shall include the right -

- (a) to a public trial by an ordinary court of law within a reasonable time after having been charged;
- (b) to be informed with sufficient particularity of the charge;
- (c) to be presumed innocent and to remain silent during plea proceedings or trial and not to testify during trial;

- (d) to adduce and challenge evidence, and not to be a compellable witness against himself or herself;
 - (e) to be represented by a legal practitioner of his or her choice or, where substantial injustice would otherwise result, to be provided with legal representation at state expense, and to be informed of these rights;
 - (f) not to be convicted of an offence in respect of any act or omission which was not an offence at the time it was committed, and not to be sentenced to a more severe punishment than that which was applicable when the offence was committed;
 - (g) not to be tried again for any offence of which he or she has previously been convicted or acquitted;
 - (h) to have recourse by way of appeal or review to a higher court than the court of first instance;
 - (i) to be tried in a language which he or she understands or, failing this, to have the proceedings interpreted to him or her; and
- to be sentenced within a reasonable time after conviction.

Economic activity

26. (1) Every person shall have the right freely to engage in economic activity and to pursue a livelihood anywhere in South Africa.
- (2) Subsection (1) shall not preclude measures designed to promote the protection or the improvement of the quality of life, economic growth, human development, social justice, basic conditions of employment, fair labour practices or equal opportunity for all, provided such measures are justifiable in an open and democratic society based on freedom and equality.

Labour Relations

27. (1) Every person shall have the right to fair labour practices.

- (2) Workers shall have the right to form and join trade unions, and employers shall have the right to form and join employers' organisations.
- (3) Workers and employers shall have the right to organise and bargain collectively.
- (4) Workers shall have the right to strike for the purpose of collective bargaining.
- (5) Employers' recourse to the lock-out for the purpose of collective bargaining shall not be impaired subject to section 33(1).

Property rights

28. (1) Every person shall have the right to acquire and hold rights in property and, to the extent that the nature of the rights permits, to dispose of such rights.
- (2) No deprivation of any rights in property shall be permitted otherwise than in accordance with a law.
- (3) Where any rights in property are expropriated pursuant to a law referred to in subsection (2) such expropriation shall be permissible for public purposes only and shall be subject to the payment of agreed compensation or, failing agreement, the payment of such compensation and within such period as may be determined by a court of law as just and equitable, taking into account all relevant factors, including, in the case of the determination of compensation, the use to which the property is being put, the history of its acquisition, its market value, the value of the investments in it by those affected and the interests of those affected.

Environment

29. Every person shall have the right to an environment which is not detrimental to his or her health or well-being.

Children

- 30. (1)** Every child shall have the right -
- (a) to a name and nationality as from birth;
 - (b) to parental care;
 - (c) to security, basic nutrition and basic health and social services;
 - (d) not to be subject to neglect or abuse; and
 - (e) not to be subject to exploitative labour practices nor to be required or permitted to perform work which is hazardous or harmful to his or her education, health or well-being.
- (2) Every child who is in detention shall, in addition to the rights which he or she has in terms of section 25, have the right to be detained under conditions and to be treated in a manner that takes account of his or her age.
- (3) For the purpose of this section a child shall mean a person under the age of 18 years and in all matters concerning such child his or her best interests shall be paramount.

Language and culture

31. Every person shall have the right to use the language and to participate in the cultural life of his or her choice.

Education

- 32.** Every person shall have the right -
- (a) to basic education and to equal access to educational institutions;
 - (b) to instruction in the language of his or her choice where this is reasonably practicable; and

- (c) to establish, where practicable, educational institutions based on a common culture, language or religion, provided that there shall be no discrimination on the ground of race or colour.

Limitation

- 33. (1)** The rights entrenched in this Chapter may be limited by law of general application provided that such limitation -
- (a) shall be permissible only to the extent that it is -
 - (i) reasonable; and
 - (ii) justifiable in an open and democratic society based on freedom and equality; and
 - (b) shall not negate the essential content of the right in question, and provided further that any limitation to -
 - (aa) a right entrenched in section 10, 11, 12, 14(1), 21, 25 or 30(1)(d) or (e) or (12); or
 - (bb) a right entrenched in section 15, 16, 17, 18, 23 or 24, in so far as such right relates to free and fair political activity,
- shall, in addition to being reasonable as required in paragraph (a)(i), also be necessary.
- (2) Save as provided for in subsection (1) or any other provision of this Chapter, no law, whether a rule of the common law, customary law or legislation, shall limit any right entrenched in this Chapter.
- (3) The entrenchment of the rights in terms of this Chapter shall not be construed as denying the existence of any other rights or freedoms recognised and conferred by common law, customary law or legislation to the extent that they are not inconsistent with the provisions of this Chapter.

- (4) This Chapter- shall not preclude measures designed to prohibit unfair discrimination by bodies and persons other than those bound in terms of section 7(1).
- (5) (a) The provisions of a law in force at the commencement of this Chapter promoting fair employment practices, orderly and equitable collective bargaining and regulating industrial action shall remain of full force and effect until repealed or amended by the legislature.
- (b) If a proposed enactment amending or repealing a law referred to in paragraph (a) deals with a matter in respect of which the National Manpower Commission, referred to in section 24 of the Labour Relations Act 1956, or any other similar body which may replace the Commission, is competent in terms of a law then in force to consider and make recommendations, such proposed enactment shall not be introduced in Parliament unless the Commission or such other body has been given an opportunity to consider the proposed enactment and to make recommendations with regard thereto."

State of emergency and suspension

34. (1) A state of emergency shall be proclaimed prospectively under an Act of Parliament and shall be declared only where the security of the Republic is threatened by war, invasion, general insurrection or disorder or at a time of natural disaster, and if the declaration of a state of emergency is necessary to restore peace or order.
- (2) The declaration of a state of emergency and any action, whether a regulation or otherwise, taken in consequence of it, shall be of force for a period of not more than 21 days unless it is extended for a period of no longer than three months or consecutive periods of no longer than three months at a time, by resolution of the National Assembly adopted by a majority of at least twothirds of all its members.
- (3) Any superior court shall be competent to enquire into the validity of a declaration of a state of emergency, any extension thereof, and any action, whether a regulation or otherwise, taken under such declaration.

- (4) The rights entrenched in this Chapter may be suspended only in consequence of the declaration of a state of emergency, and only to the extent necessary to restore peace or order.
- (5) Neither any law which provides for the declaration of a state of emergency, nor any action taken in consequence thereof, shall permit or authorise -
 - (a) the creation of retrospective crimes;
 - (b) the indemnification of the State or of persons acting under its authority for unlawful actions taken during the state of emergency; or
 - (c) the suspension of this section, and sections 7, 8(2), 9, 10, 11(2), 12, 14, 27(1) and (2), 30(1)(d) and (e) and (2) and 33(1) and (2).
- (6) The detention of a person under a state of emergency shall be subject to the following conditions:
 - (a) an adult family member or friend of the detainee shall be notified of the detention as soon as is reasonably possible;
 - (b) the names of all detainees and a reference to the measures in terms of which they are being detained shall be published in the Gazette within five days of their detention;
 - (c) when rights entrenched in sections 11 or 25 have been suspended -
 - (i) the detention of a detainee shall, as soon as it is reasonably possible but not later than 10 days after his or her detention, be reviewed by a court of law, and the court shall order the release of the detainee if it is satisfied that the detention is not necessary to restore peace or order;
 - (ii) the detainee shall at any stage after the expiry of 10 days of a review in terms of subparagraph (i) be entitled to apply to a court of law for a further review of his or her detention, and the court shall order the release of the detainee if it is satisfied that the detention is no longer necessary to restore peace or order;
 - (d) the detainee shall be entitled to appear before the court in person, to be represented by legal counsel, and to make representations against his or her continued detention;
 - (e) the detainee shall be entitled at all reasonable times to have access to

- a legal representative of his or her choice;
- (f) the detainee shall be entitled at all times to have access to a medical practitioner of his or her choice; and
 - (g) the state shall for the purpose of a review referred to in paragraph (c)(i) or (ii) submit written reasons to justify the detention or further detention of the detainee to the court, and shall furnish the detainee with such reasons not later than two days before the review.
- (7) If a court of law, having found the grounds for a detainee's detention unjustified, orders his or her release, such a person shall not be detained again on the same grounds unless the state shows good cause to a court of law prior to such re-detention.

Interpretation

- 35.** (1) In interpreting the provisions of this Chapter a court of law shall promote the values which underlie an open and democratic society based on freedom and equality and shall, where applicable, have regard to public international law applicable to the protection of the rights entrenched in this Chapter, and may have regard to comparable foreign case law.
- (2) No law which limits any of the rights entrenched in this Chapter, shall be constitutionally invalid solely by reason of the fact that the wording used prima facie exceeds the limits imposed in this Chapter, provided such a law is reasonably capable of a more restricted interpretation which does not exceed such limits, in which event the law shall be construed as having the said more restricted meaning.
- (3) In the interpretation of any law and the application and development of the common law and customary law, a court shall have due regard to the spirit, purport and objects of this Chapter.

**PROVISIONS WHICH WILL BE INCLUDED ELSEWHERE IN THE
CONSTITUTION**

CHAPTER 'Y' : RESTITUTION OF LAND RIGHTS

- (1) Any person who, or any community which, at any time after a date fixed by an Act of Parliament (which date shall not be earlier than 19 June 1913), was dispossessed of a right in land under, or for the purpose of furthering the object of, any law which would have been inconsistent with the prohibition of racial discrimination contained in section 8(2), had that section been in operation at the time of such dispossession, shall be entitled to claim restitution in a court of law in respect of such, right from the state.
- (2) Any claim under subsection (1) shall be subject to such conditions, limitations and exclusions as may be prescribed by the said Act and shall not be justiciable by a court of law unless processed in accordance with such Act by a Commission established for the purpose by such Act.
- (3) The Commission referred to in subsection (2) shall at least be competent -
 - (a) to investigate the merits of any claims;
 - (b) to mediate and settle disputes arising from such claims; and
 - (c) to draw up reports on unsettled claims for submission as evidence to a court of law and to present any other relevant evidence to the court.
- (4) Where an unsettled claim is lodged with a court of law and the land in question is -
 - (a) in the possession of the state, the court may, subject to subsection (7), order the state to restore the relevant right to the claimant if the state certifies that such restoration is feasible; or
 - (b) in the possession of a private owner and the state certifies that the acquisition of such land by the state is feasible, the court may, subject to subsection (7), order the state to purchase or expropriate such land and to restore the relevant right to the claimant.
- (5) The court shall not issue an order under subsection (4)(b) unless it is just and equitable to do so, taking into account all relevant factors including the

history of the dispossession, the hardship caused, the use to which the property is being put, the history of the acquisition by the owner, the interest of the owner and others affected by any expropriation, and the interests of the dispossessed: Provided that any expropriation under the said subsection (4)(b) shall be subject to the payment of compensation calculated in the manner provided for in section 28(3).

- (6) If the State certifies that any restoration in terms of subsection (4)(a) or any acquisition in terms of subsection (4)(b) is not feasible, or if the claimant instead of the restoration of the right prefers alternative relief, the court may, subject to subsection (7), order the state in lieu of the restoration of the said right -
 - (a) to grant the claimant an appropriate right in available alternative state-owned land designated by the State to the satisfaction of the court, provided that the state certifies that it is feasible to designate alternative state-owned land;
 - (b) to pay the claimant compensation; or
 - (c) to grant the claimant any alternative relief.
- (7)
 - (a) The compensation referred to in subsection (6) shall be determined by the court as just and equitable, taking into account the circumstances which prevailed at the time of dispossession and all such other factors as may be prescribed by the said Act, including any compensation that was paid upon such dispossession.
 - (b) If the court grants any claimant relief contemplated in subsection (4) or (6) it shall take into account, and, where appropriate, make an order with regard to, any compensation that was paid to the claimant upon the dispossession of the right in question.
- (8)
 - (a) This section shall not apply to any rights in land expropriated under the Expropriation Act, 1975 (Act No. 63 of 1975), or any other law incorporating the Expropriation Act, 1975, or its provisions with regard to compensation, if just and equitable compensation as contemplated in subsection (6) was paid in respect of such expropriation.

- (b) In this section "Expropriation Act, 1975" shall include any expropriation law repealed by that Act.

- (9) No claims under this section shall be lodged before the passing of the Act of Parliament contemplated herein.