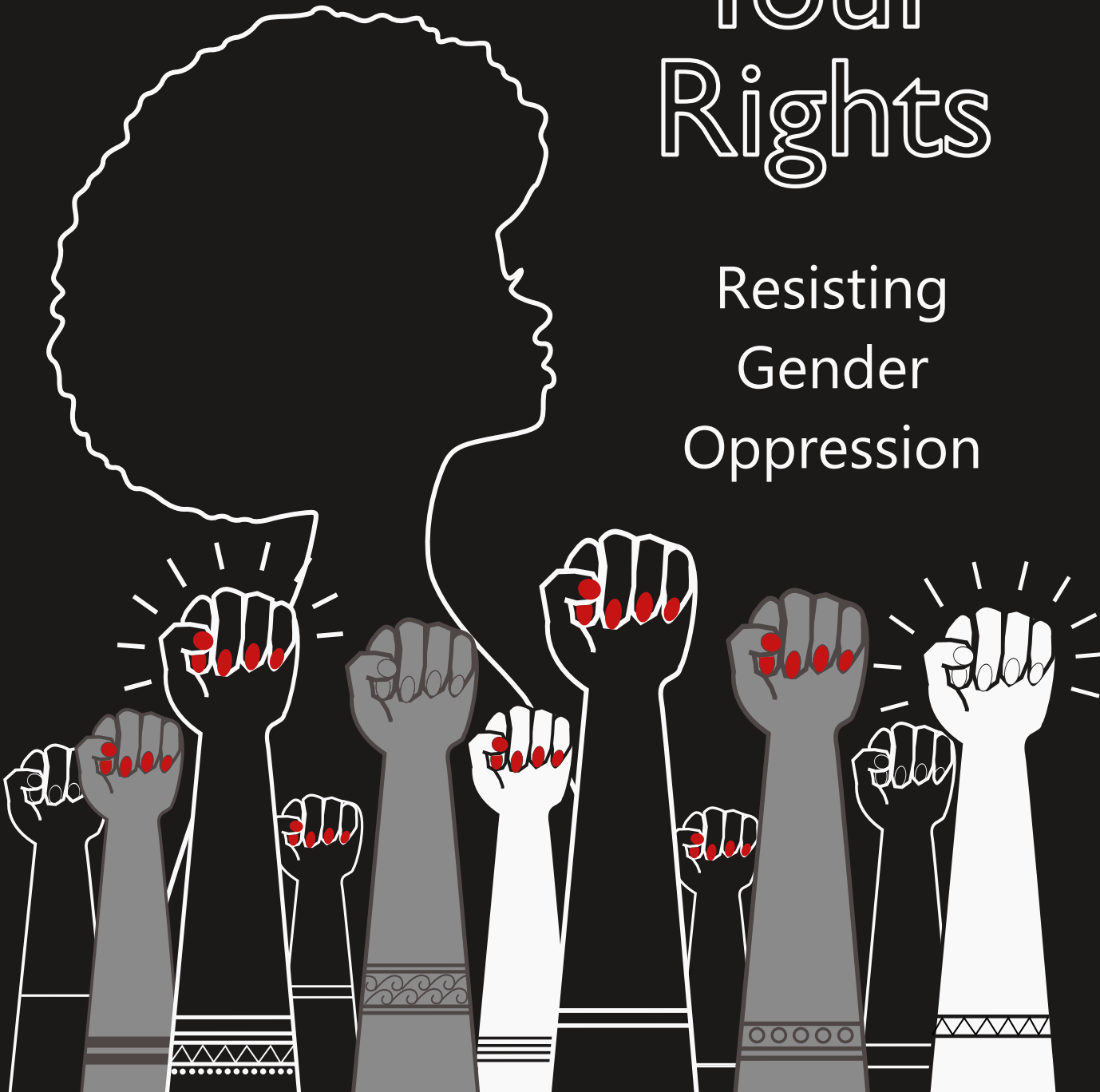




# Know Your Rights

Resisting  
Gender  
Oppression





**Know Your Rights:  
Resisting Gender Oppression**

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# Acronyms

**GBV**- Gender Based Violence

**VAW** - Violence Against Women

**LGBTQI+** - Lesbian, Gay, Bisexual, Transgender, Queer, Intersex and others

**CCMA** - Commission for Conciliation, Mediation and Arbitration

**NEDLAC** - National Economic, Development and Labour Council

**CEE** - Commission for Employment Equity

**SAPS** - South African Police Services

**NUMSA** – National Union of Metalworkers of South Africa

**SAFTU** – South African Federation of Trade Unions

## About this Guide

South Africa has the shameful status as the most unequal society measured by its Gini co-efficient with women bearing a disproportional brunt of this high inequality. With inequality comes many other forms of social injustices such as racism, gender stereotypes, patriarchy, violence, precarious employment and unemployment, and capitalist exploitation, all of which continue to dominate South African society. While these injustices affect both women and men, women experience simultaneous and multiple forms of oppression and discrimination (e.g. race, class and gender) on a daily basis. Statistics South Africa reports in its Victims of Crime Survey (2016/2017) that one in five individuals, mainly women, experienced a sexual offence, and sexual victimisation of women is more than twice the rate for men.

In 2018, South Africa faced unprecedented gender based violence that claimed a number of lives due to murder of women by men, and 1 in 5 South African women older than 18 years experienced physical violence, while 4 in 10 divorced or separated women reported physical violence. Children and members of LGBTIQI+ community are also victims of gender-based violence and hate crime.

The National Union of Metal Workers of South Africa (NUMSA) and the South African Federation of Trade Unions (SAFTU) have committed themselves to challenging gender based violence, gender discrimination, and all forms of sexism. NUMSA passed resolutions from its inception committing the union to link violence against women as a workplace issue. In an effort to step up our participation in the campaign (nationally and internationally), the union has networked closely with similar minded organisations (NC 2000).

NUMSA (NC 2000) has noted that whilst there is legislation on violence against women the scourge of violence is on the increase. The union has therefore resolved that NUMSA must become the driving force of change and seen to champion the plight of working class women who are among the most vulnerable.

There are many laws prohibiting gender discrimination and gender based violence, women have rights that ensure their equal treatment, and government and civil society institutions have been set up to protect women against discrimination. However, many women (and men) do not know about these laws, rights and institutions. NUMSA and SAFTU have compiled this guide in order to help unionists in our struggle for gender equality. It is one thing to pass resolutions and make claims, but another thing to turn these commitments into concrete action. The guide provides an overview of the laws and rights relating to gender equality and gender based violence as well as a list of relevant institutions in different provinces. After Apartheid ended, a number of laws and policies were put in place by the government to protect human rights, including laws against gender-based violence. We also have many women in the state both as elected members of parliament and as officials in the government. However, despite these laws, policies and women in government, women still make up the vast majority of the poor and marginalised and are the main victims of gender-based violence. Many women (and men) are not aware of the laws that provide protection against discrimination, gender-based violence, and abuse.

## **What Can We Do?**

This activist tool is meant to help women exercise their democratic rights and make use of the processes that our progressive Constitution allows for. This document was produced by both NUMSA and SAFTU to create awareness



around the rights and laws that protect people from gender-based violence, that promote broader gender equality as well as the obligations of the state to translate these developments into reality. The more people are aware of and demand implementation of these systems put in place for our protection, the more they will become effective. We must hold the state, corporations and our organisations responsible for using these systems to protect us. We must use our unions to ensure gender equality becomes a reality and that we eliminate gender-based violence in all sectors of life.

### Key to Guide



Useful information



Definitions



Facts and Statistics

# Introduction to Concepts

## What is “Gender”?

Gender is not the same thing as sex. Sex refers to physical differences of men and women. Gender is not biological or natural, it is socially constructed by society, customs, and traditions that reinforce unequal power relations between men and women. Gender is a system of meanings that organise our daily lives. There are many social assumptions about the differences between men and women, and what it means to be masculine and feminine. For example, cooking and cleaning are often seen as women’s work even if the women are working outside the home all day just like men, and even though there is no biological reason why women do this kind of work. Instead, socially constructed gender differences are used to reinforce an unequal division of labour. These divisions serve the interest of men, who benefit from the subordination of women. They also serve the interest of capitalism because dividing workers along gender lines divides the working class and justifies women getting paid less than men. It also means that women reproduce the family through unpaid labour in the household (through their care work in raising children, taking care of elderly, feeding the family, etc.).

## What is “Patriarchy”?

Patriarchy is a society-wide structure characterised by unequal gender relations, defined by male dominance and female subordination, where authority is held by a male head of the family, this sentiment also extends to society where patriarchy creates an unjust social system that oppresses and discriminates against women.<sup>i</sup> This is a system which still persists.<sup>ii</sup> It is not just a structural system, it is a political project that intentionally distributes

power in an unequal way between women and men. There are existing institutions that reproduce the dominance of men over women and reproduce the inequalities. Patriarchy can be felt on an institutional level, where the collective male population oppress women, but it can also be felt individually where men tend to impose power over women by attempting to control women's bodies, minds and sexuality. This control can happen institutionally through the law, culture and religion, but is also often felt through physical, sexual and psychological violence.

## **What is “Gender-Based Violence”?**

***Violence Against Women and Girls (VAW/G) versus Gender-Based Violence (GBV):*** These two terms are often used interchangeably, but do not mean the same thing. GBV is a more general term and refers to the violence that occurs in society when there are expectations on the roles that each gender should be or when there are unequal power relationships between genders.

All genders can be victims of GBV. For example, in many communities, people in the Lesbian, Gay, Bisexual, Transgender, Queer, Intersex and others (LGBTQI+) community experience discrimination (particularly in the health and legal sectors) as well as physical, emotional and psychological attacks. This discrimination happens because they do not conform to their gender roles (remember gender roles are socially constructed in society) or they deviate from expectations of masculinity and femininity.<sup>iii</sup>

Violence Against Women and Girls is the most common form of GBV. Whilst GBV (in the form of domestic violence, sexual violence, intimate partner violence or structural violence) can occur amongst all genders, sexualities etc., it is women and girls that constitute the vast majority of GBV victims and men the majority of perpetrators. The contexts in which GBV is experienced

by women and girls is most often within their intimate circles. For example, the perpetrator of an act of GBV on a woman/girl is more likely to be an intimate partner or relative, whereas the GBV against men is more likely to be perpetrated by a stranger or acquaintance (with exceptions such as child sexual abuse and human trafficking).

***Gender-Based Violence versus Gender Inequality:*** GBV can also be indirect or structural (that is, it is part of the structures of society such as the economy, the family, etc.). This means that “violence is built into structures, appearing as unequal power relations and, consequently, as unequal opportunities. Structural violence exists when certain groups, classes, genders or nationalities have privileged access to goods, resources and opportunities over others, and when this unequal advantage is built into the social, political and economic systems that govern their lives”.<sup>iv</sup>

This structural aspect of GBV is also known as gender inequality. This is when men and women have unequal opportunities or are treated differently because of gender (for example, when men are paid more than women in the same job, or when certain jobs are given to men and other jobs to women). Gender inequality is addressed in two ways. The first is the formal establishment of rights and laws that protect anyone from being unfairly treated or discriminated against based on their gender. Our Constitution (1996) and the laws that follow from it protect us from discrimination. However, given the structural nature of gender inequality, it is not enough to change laws. We must also change our social relations, our behaviour, our cultures, our families, etc. There must be programmatic, institutional and cultural changes.

Gender inequality can be violent for those experiencing it when it threatens their physical, emotional, mental, economic and social well-being. This is

when gender inequality becomes gender-based violence. On the other hand, gender-based violence is experienced disproportionately by certain groups, as previously mentioned, due to gender inequality. Gender-based violence usually refers to physical and verbal forms of violence whereas “gender equality” is used to refer to overcoming discrimination, promoting equal rights and preventing indirect violence e.g. in the workplace, or in male superiority as a social norm.

How can we fight gender inequalities and gender-based violence? In the next section, we discuss the important rights in our Constitution that protect us against gender inequality and gender-based violence. But we must remember that the Constitution only becomes an instrument of power when we demand that its principles are upheld. They must be claimed and shaped by popular class struggle from below.

## **Other Important Concepts**

***Heteronormative gender role:*** Heteronormativity is the belief that heterosexuality (romantic and sexual attraction to the opposite sex) is the only normal sexual orientation. It does not only place strict norms on sexuality, but it also reinforces strict expectations of the roles that men and women should place in society.<sup>v</sup>

***Cisgender:*** A person whose gender identity corresponds with the sex the person was identified as at birth.

***Transgender:*** A person who is transgender is somebody whose gender identity differs from the sex the person was identified as at birth.<sup>vi</sup>

***Feminism:*** This is an ideology that men and women should have the same opportunities, rights and powers and should be treated in the same way.

**Toxic masculinity:** Masculinity is defined as the mannerisms and characteristics traditionally seen as related to, suitable for and typical of men.<sup>vii</sup> The addition of the word toxic to the term toxic masculinity is defined as those norms and behaviours traditionally associated with men as being harmful to women, other men and children. Toxic masculinity is often characterised by hyper-competitiveness, glorification of violence, sexism, misogyny, enforcement of socially constructed heteronormative gender roles and entitlement.<sup>viii</sup>

**Social reproduction:** Women socially and physically reproduce the human species. They are held responsible for cooking, cleaning, childcare, eldercare etc., which are all work that create the necessary conditions for human beings to work (they create the conditions for production and profit), but women do not get paid for this work. This work is naturalised and viewed by society as a woman fulfilling her natural role. Only productive work in the capitalist system gets paid. But this does not have to be this way. Some societies have paid women for this type of work.

**Misogyny:** This is the hatred of, contempt for and prejudice against women and girls (cisgender or transgender). It manifests in different ways, for example. male privilege, social exclusion, violence against women and girls, and belittling of women.<sup>ix</sup>

**Sexual Division of Labour:** This is the distinction between “male labour/work” and “female labour/work”. This is often manifested in the “male breadwinner” and the “female housewife”, particularly in the context of industrialisation in the West. It also refers to gender roles in other tasks e.g. foraging/weaving assigned to women and hunting/protection assigned to men.

**Femicide:** This is the killing of women and girls on account of their gender. This covers the murder of women by an intimate partner, the torture or misogynistic slaying of women, so called honour killings. This is the targeted killing of women and girls.<sup>x</sup>

**Intersectionality:** This is the simultaneous experience of multiple forms of societal oppressions, and it is the recognition that various forms of oppression are mutually dependent and intersect in reality. It refers to the multiple forms of oppression (the intersection) of class, gender, race, sexuality, and nationality.<sup>xi</sup>

**Womxn:** This is a version of the word “women” to emphasise the inclusivity of trans-women, femme gender queer and non-binary people.

**Sexuality:** This is one's sexual identity, sexual attraction, and experiences which may or may not align with sex and gender. It is socially constructed and the expression of sexuality is expressed differently across culture, time and place.

# The Constitution: What are Your Rights?

i

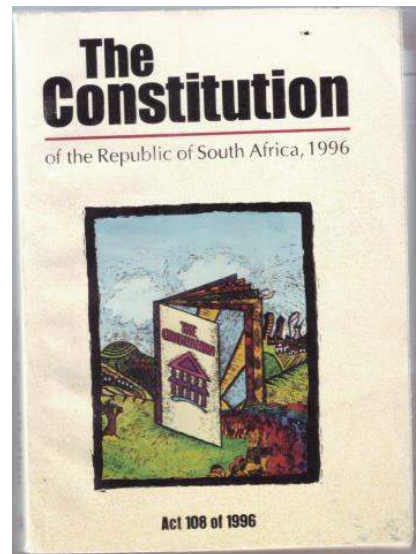
## Did You Know?

The South African Constitution is unique compared to the rest of the world!

**First generation rights:** these are called negative rights, which protect people against violations from abuse by the State or other powerful entities. Examples of first generation rights are freedom of association, freedom of speech, labour rights, and collective bargaining.

**Second generation rights:** these are socio-economic rights or positive rights, which require the State to provide something. Examples of second generation rights are the right to health care, sufficient food and water.

The Constitution requires that the country, and importantly the state, upholds the values of human dignity, the achievement of equality and the advancement of human rights and freedoms. It is the highest level of law in South Africa. This means every law, policy, person or body must abide by the rights set out in Chapter 2: the Bill of Rights. The rights in the Constitution under which everyone is protected against Gender-Based Violence are as follows.





## ***Chapter 2 Section 9.1***

*Everyone is equal before the law and has the right to equal protection and benefit of the law.*

This is an overarching right that tells us that we are all equal, and we all have the same rights when it comes to protection from various things. As seen in this right, the word “everyone” is used, this is a right that can be interpreted to allow for the protection of non-binary, gender non-conforming, trans and other members of the LGBTQI+ community.

## ***Chapter 2 Section 9.3***

*The state must 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, language and birth.*

## ***Chapter 2 Section 9.4***

*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.*

Not only is discrimination unconstitutional, and therefore also unlawful, it is also something that the constitution says must be prevented in terms of more specific laws. This section, once again, also provides protection for members of the LGBTQI+ community.

## ***Chapter 2 Section 10***

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

This section brings in the concept of dignity, this can be extended to the household, working conditions and other spaces where women's dignity is often undermined.

## ***Chapter 2 Section 11***

*Everyone has the right to life.*

This section protects your right to life, regardless of your social standing, you have the right to not have your life taken from you.

## ***Chapter 2 section 12.2 a & b***

*Everyone has the right to bodily and psychological integrity, which includes the right: to make decisions concerning reproduction, to security in and control over their body...*

This section provides you the right to control over your body, as well as your psychological integrity. This means that you have complete control over your body and any decisions about your body including whether to have children or not.

## ***Chapter 2 Section 23.1***

*Everyone has the right to fair labour practices.*

This section provides a basis for fair labour practices. It ensures that power differences in the workplace are dealt with in a manner that does not create unfair working conditions. These power differences may also apply to the power relations regarding gender.

### *Chapter 2 Section 24*

*Everyone has the right to an environment that is not harmful to their health or wellbeing; and to have the 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.*

This section protects everyone's right to a clean, healthy and sustainable environment. It also requires that this right be taken further with providing the necessary laws and policies to ensure that it is realised.

### *Chapter 2 Section 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.*

This section means that no one's property can be taken away unless in terms of a law that applies in the same way to everyone, and that no law can allow property to be taken away without a proper reason.

## ***Chapter 2 Section 27.1 a & b***

*Everyone has the right to have access to - health care services, including reproductive health care; sufficient food and water; and social security, including, if they are unable to support themselves and their dependents, appropriate social assistance.*

These rights refer to having access to health care services (including reproductive health care) as well as sufficient food and water. These are socio-economic rights which all people have access to and the state must take reasonable measures to achieve the progressive realisation of these rights. No one may be refused emergency medical treatment, whether they are in the country lawfully or not. It also means the state must ensure that all people have enough food and water to survive. The state's obligations are limited by its available resources.

## ***Chapter 2 Section 29.1***

*Everyone has the right to a basic education, including adult basic education; and to further education, which the state, through reasonable measures, must make progressively available and accessible.*

This section states that basic education, no matter your age, is your constitutional right. It is also your right for this basic education to be made accessible to you by the government.

## ***Chapter 2 Section 33.1***

*Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.*

You also have the constitutional right that any action that is taken by the state, which affects you, is done lawfully and fairly.

### ***Chapter 2 Section 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.*

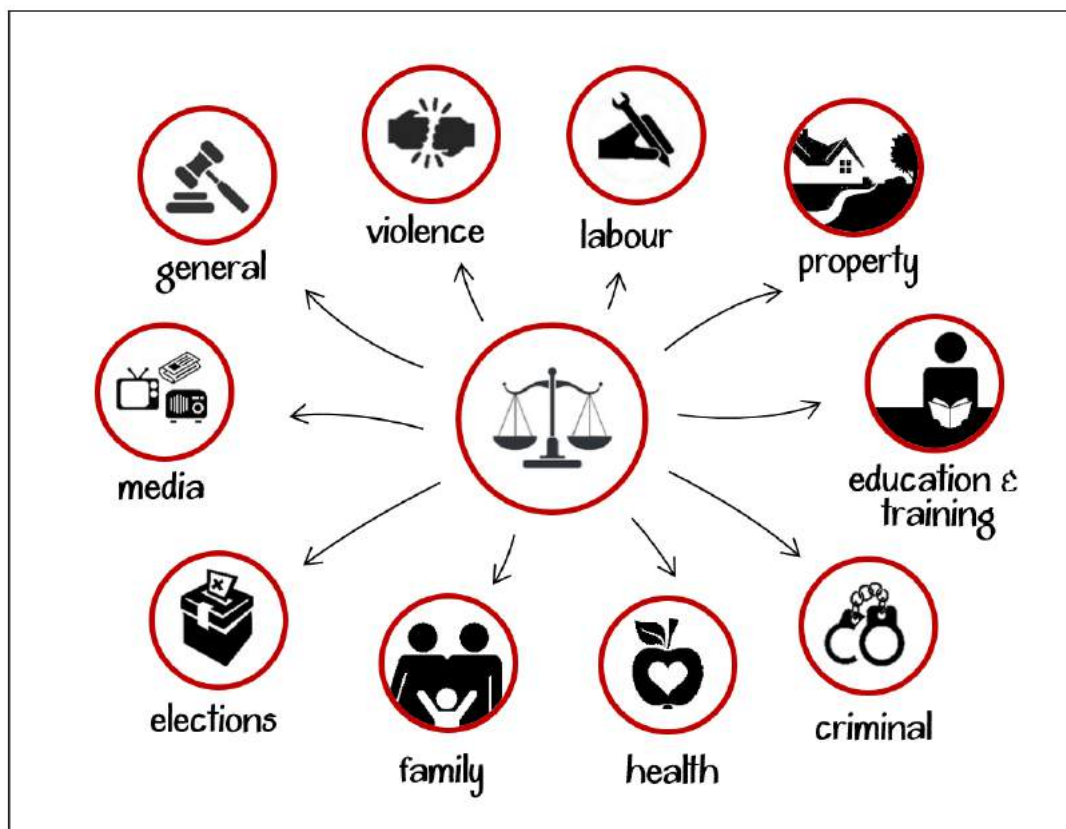
This section provides for the right to access a fair public hearing by a court (which is an independent body, only subject to the Constitution and the law) or another independent and impartial tribunal or forum. This right, like all rights, is protected by the Constitutional Court, which binds all other courts. This means that no one may be denied the opportunity of opening a just civil or criminal court case against someone, or intimidated or shamed into not bringing a case, or withdrawing a case. It also means that if a case is made against you, you have the right to a fair public hearing.

### ***Chapter 9***

Chapter 9 establishes six institutions to strengthen and support constitutional democracy in South Africa. Of these, two are particularly relevant to people dealing with GBV: The South African Human Rights Commission and The Commission for Gender Equality. Parliament has enacted specific laws determining how these Commissions function, and they are described in the next section.

## Laws: Instruments for Addressing Social Challenges

Laws are instruments for addressing social challenges, regulating power relations, and determining institutional arrangements. All laws must be consistent with the Constitution, that means they cannot be against the Constitution. The laws highlighted in this section can be used to fight gender inequality and gender-based violence. For each law, we provide a basic summary of what the law provides for, and some advice on how can it be used, if you find yourself in a particular situation. The laws are divided into the following categories, as illustrated below:



## General Laws that Deal with Gender Equality



In this section we focus on general laws that directly address gender equality.

### Did You Know?



South Africa has a “National Gender Policy Framework”? The National Gender Policy Framework was created to ensure that all policies and laws at all levels of government incorporate gender equality and provide protections from gender-based violence.

### *The South African Human Rights Commission Act, 2013*

**Overview:** This law provides for the functioning of the South African Human Rights Commission, which was established by the 1993 Constitution and continued by the Constitution, and is an independent structure that must uphold and monitor human rights in South Africa. The commission can investigate and mediate cases. It will then release a report and make a recommendation on their findings.

**How can it be used?** The Human Rights Commission monitors and observes human rights in the country. You can approach the Human Rights Commission with grievances that violate human rights. It will investigate and if necessary mediate cases where human rights are violated.



### Did You Know?

This Act, together with section 187 of the Constitution, requires the Commission for Gender Equality to:

- Promote gender equality.
- Provide advice and recommendations to Parliament or any other legislature regarding any law or proposed legislation that affects gender equality or the status of women.
- Monitor and evaluate the policies and practices of the state, any other public authority, statutory and private businesses/institutions.
- Conduct information and education programmes to foster public understanding of gender equality.
- Conduct research to further gender equality.
- Investigate disputes regarding gender equality from a filed complaint or from its own accord.

### *Commission on Gender Equality Act, 1996*

**Overview:** This Act implements section 187 read with 181 of the Constitution, which provide for the establishment of a Commission for Gender Equality. It provides for the functioning of the Commission for Gender Equality.

**How can it be used?** According to this Act, the Commission for Gender Equality has a mandate to investigate gender equality disputes. You must file a complaint with the Commission. See further details below on how this is done.



## *Women Empowerment and Gender Equality Bill*

**Overview:** A Bill is a draft Act and is not yet law. This Bill was introduced into parliament in 2014 amid some criticism. Much of the Bill's mandate is already covered in other laws such as the Employment Equity Act and the Promotion of Equality and Prevention of Unfair Discrimination Act. The Bill allows for a more progressive realisation of the representation of women in decision-making bodies. The focus here is on women already employed in the formal sector, thus it excludes the vast majority of gender inequalities.

**How can it be used?** If the Bill becomes an Act, it could be a tool within public and private institutions where there is an unequal representation of women in the decision-making bodies of these institutions. For example, the Act could be used in traditional/communal land where there is vast underrepresentation of women within traditional leadership.

### **Did You Know?**

This Act specifically mentions patriarchy, apartheid and colonialism as causes of existing inequality.

## *Promotion of Equality and Prevention of Unfair Discrimination Act, 2000*

**Overview:** This Act is the national legislation required by section 9(4) of the Constitution. It sets out measures intended to promote equality and address social and economic inequality. It also includes measures to prevent unfair discrimination. The parts of the Act that promote equality have not yet come into force. The part of the Act that is already in force provides that neither

the government nor any person can discriminate against another person, this applies to race, gender (gender-based violence is mentioned), disability and other grounds. The Act also establishes the Equality Court.

**How can it be used?** The Act gives you the right to take action, in the Equality Court, against anybody, including the State, if you feel you are being discriminated against on the basis of race, gender or disability. Traditional, cultural or religious practices that undermine the dignity of women, limited access to land rights, unfair treatment because you are pregnant, and the lack of access to opportunities in the workplace due to sexual division of labour all fall under “discrimination on the basis of gender”. This Act also gives you the right to take action against harassment or hate speech.



**Some of the harmful traditional and cultural practices are:**

***Ukungenwa (widow inheritance):*** in some conservative rural areas of South Africa, when a woman’s husband passes on she is inherited by one of his male relatives often without her consent.

***Female Genital Mutilation: Muthuso*** is a common practice in the Venda community. It refers to vaginal flesh cut from new mothers and placed on their baby’s head. It is believed that this prevents the swelling of the back of the baby’s head. There is often excessive bleeding and a lack of postnatal care which can lead to death. Female Gender Mutilation also occurs when Venda girls reach womanhood and undergo female circumcision (cutting of the clitoris).

# Violence



## Did You Know?



Everyone is protected by the Constitution and the law from all forms of person-to-person gender violence. These laws deal with sexual abuse, domestic violence and harassment. The laws that protect people from all forms of sexual assault and rape (including human trafficking) are: The Criminal Law Amendment Act (2007), The Sexual Offences Act (1957), The Law of Evidence and Criminal Procedure Act (1987), The Judicial Matters Second Amendment Act (2013). They provide for broader definitions of rape, relevant services from the South African Police Service, the necessary procedures for dealing with these, a National Register for Sex Offenders. The Domestic Violence Act (1998) provides the necessary protections from forms of domestic violence and the Protection Against Harassment Act (2011) provides protection against harassment.

Even with widespread underreporting, 55 000 rapes are reported by women and children in South Africa each year. Research indicates that the real number is close to nine times the reported rate.





**Violence** can be defined as behaviours, words or actions that are intended to hurt another.<sup>xii</sup>

**Harassment** is a persistent act that is unwanted, either physical or verbal that demeans, humiliates or intimidates another.

**Rape** as defined by the Criminal Law Act (2007) is “Any person ('A') who unlawfully and intentionally commits an act of sexual penetration with a complainant ('B'), without the consent of B, is guilty of the offence of rape”.

Below are brief overviews of each of these laws against violence and how they can be used to ensure your rights are protected against person to person violence.

### ***The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007***

**Overview:** The Criminal Law (Sexual Offences and Related Matters) Amendment Act deals with matters surrounding rape and sexual assault. The purpose of this Act was to review the implementation and aspects of laws relating to sexual offences and put them into one law. This Act also broadened the scope of what counts as rape and sexual violation. It also provides South African Police Services (SAPS) new tools in their investigations of sexual violation and provides for services to try to limit the amount of trauma a victim has to go through during the course of the case. This law also calls for the establishment of a National Register for Sex Offenders, which was set up in 2009.

### Have you faced any of the following?

- Sexual penetration without consent;
- Sexual violation without consent;
- Instances where somebody compels another to rape or sexually assault;
- Instances where adults expose certain body parts or sexual activity to a child, including child pornography;
- Instances where people sexually exploit and groom children and people with mental disabilities;
- Instances where people expose pornography to children or people with mental illness;
- Attempt or incitement to rape or commit a sexual offence;
- Instances where people are being trafficked for sexual purposes.

***Under this law, you have the right to be protected against and report any of these sexual offenses.***

### *The Sexual Offences Act, 1957*

**Overview:** This act deals with various aspects of owning and participating in a brothel. In terms of *Section 10* anybody who causes a woman to take a substance that would hinder her judgment and would make it easier for somebody to have sex with the woman is guilty of an offence. The section also provides that it is an offence to cause or entice “any female” to have unlawful intercourse with someone. *Section 12* then says that anybody who keeps a woman against her will for purposes of being a sex worker or to

participate in a brothel is also guilty of an offence. This includes any act of convincing or compelling a woman (the section specifies a “female”) to stay in a house that is a brothel. The fact that these sections only protect people who are “female” may be inconsistent with the Constitution, as there is no reason why everybody should not be protected in this manner.

**How can it be used?** This gives you the right to report any houses or people you know of or suspect to be holding people against their will for sex work, or to be forcing people to have sex with other people, or if you yourself find yourself in that situation. This law is particularly relevant in the fight against human trafficking.

### *Law of Evidence and the Criminal Procedure Amendment Act, 1987*

**Overview:** This Act is an amendment of the Criminal Procedure Act 51 of 1977. The Criminal Procedure Act is a broad, overarching Act that provides for the necessary regulations regarding criminal proceedings. This particular amendment was made because the previous act did not allow the prosecution of boys under the age of 14 in relation to sexual assault and rape cases.

**How can it be used?** This amendment allows you to report sexual abuse perpetrated by boys even under the age of 14.

### *The Judicial Matters Second Amendment Act, 2013*

**Overview:** This Act is an addition to the Sexual Offences and Related Matters Act and allows the minister to convert a court into a sexual offences court that deals directly and only with cases of sexual offences and can also increase the jurisdiction of the court. This Act also allows for instructions and

directives to be published, setting out the manner in which sexual offences cases must be dealt with by the police, social workers and healthcare practitioners.

**How can it be used?** This law gives you the right to question the manner in which sexual offence cases are dealt with by the police, prosecutors and healthcare practitioners, and to check this against the law and national instructions and directives.

### *The Domestic Violence Act, 1998*

**Overview:** The Domestic Violence Act affords women protection from domestic violence by providing for the issuing of protection orders and by creating obligations on necessary law enforcement bodies, to protect victims as far as possible. The Act recognises that domestic violence is a serious crime.

**How can it be used?** The Act provides an accessible legal instrument that can be used to prevent further domestic abuse. It does not only apply to married women and children, but unmarried women either living or not living with their partners, same-sex relationships and other people sharing a living space.

### *The Protection from Harassment Act, 2011*

**Overview:** This Act addresses harassment and stalking behaviour which violate the Constitutional rights to privacy and dignity of individual persons.

**How can it be used?** This Act provides for the protection of an individual who may not have experienced a crime but has been subjected to behaviour that may have infringed on their rights.



**Are you facing harassment in the workplace?**

This Act was specifically developed as a result of the criminal and civil legal frameworks not adequately covering non-domestic harassment. It therefore protects you from harassment in the workplace, or anywhere outside the home. It may also be used to prevent harassment in the home, although it is better to use the Domestic Violence Act for that.



# Labour



## Did You Know?

The Constitution allows for everyone to have the right to fair labour practices. This right is important for gender equality because these “fair” practices have to consider the inequalities experienced by women and other victims of GBV in the workforce. There are a number of laws put into place to ensure this. The Labour Relations Act (1995) establishes a Commission for Conciliation, Mediation and Arbitration (known as the “CCMA”) which can help you if you have been unfairly dismissed for any reason, including reasons based on your gender, sexual orientation, marital status or family responsibility. The Occupational Health and Safety Act (1993) protects you from any work-related health and safety risks. The Basic Conditions of Employment Act (1997) provides for conditions of employment to be fair including working hours and leave (including maternity leave). The Employment Equity Act encourages the promotion of opportunities for those who have been disadvantaged in the workplace, including women, through skills development and addressing wage gaps between men and women.



**Employee:**

- (a) any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and
- (b) any other person who in any manner assists in carrying on or conducting the business of an employer, *Labour Relations Act 66 (1995)*

**Domestic Worker** means an employee who performs domestic work in the home of his or her employer and includes:

- A gardener;
- A person employed by a household as a driver of a motor vehicle; and
- A person who takes care of children, the aged, the sick, the frail or the disabled, but does not include a farm worker

*Basic Conditions of Employment Amendment Act 11 (2002).*

**Danger** means anything which may cause injury or damage to a persons or property

**Work** means work as an employee or as a self-employed person, and for such purpose an employee is deemed to be at work during the time that he is in the course of his employment, and a self-employed person is deemed to be at work during such time as he devotes to work as a self-employed person.



If we consider the entire workforce, 44 in every 100 employed individuals are women. Women fill 44% of skilled posts, which includes managers, professionals and technicians. These numbers do not take into consideration informal work and unpaid work which women make up the majority.<sup>xiii</sup>

Below are brief overviews of each of the laws relating to employment and labour and how they can be used to ensure your rights are protected.

### *Occupational Health and Safety Act, 1993*

**Overview:** This Act provides for the health and safety for persons at work as well as the establishment of an advisory council. It covers:

- The use of plant equipment and machinery;
- People who do not work in health and safety hazardous workplaces.

It holds employers/management responsible for setting up safety representatives and safety committees in the workplace.

The regulations in the Act give guidelines on things such as toilets, change rooms, first aid, drinking water, washing facilities, protective clothing, machinery, stacking and packing, ladders, fire, ventilation, lighting, temperature, noise and asbestos. Inspectors have wide powers in terms of the Act to make sure that employers and workers follow the Act.



#### **Did You Know?**

The Act covers all workers, including farm and domestic workers, who do not work in mines or on certain types of ships.

**How can it be used?** This Act gives you the right to certain health and safety measures which includes those that apply specifically to women. For example, employers are required to provide safety and protection from reproductive health risks. This would include risks to pregnancy for women.

## *Labour Relations Act, 1995*

**Overview:** This Act deals with the rights that are given to trade unions, how they bargain in the workplace or at the sectoral level and how they operate. It also deals with strikes, allows for and encourages the establishment of workplace forums, labour dispute resolutions and unfair dismissals.

**How can it be used?** This law protects your right to not be dismissed from employment and discriminated against on the basis of gender, sexual orientation, marital status or family responsibility. This right also protects your rights as a woman to have control over your body, and therefore it protects your right to be pregnant, or to express your intention to get pregnant. If you are dismissed on any grounds relating to your reproductive rights, this law says that such a dismissal is unfair, and you can use this law to oppose your dismissal.



### ***What is the CCMA?***

The Commission for Conciliation, Mediation and Arbitration (CCMA) is a dispute resolution body established in terms of the Labour Relations Act, 66 of 1995 (LRA). It is an independent body, does not belong to and is not controlled by any political party, trade union or business.

## *Unemployment Insurance Act, 1997*

**Overview:** This Act provides for the establishment of the Unemployment Insurance Fund. This fund provides unemployment benefits to certain employees, as well as the payment of illness, maternity, adoption and dependent's benefits related to unemployment.

**How can it be used?** The Act relates to gender and women in terms of the right to maternity benefits. These include financial compensation for maternity leave (maximum of 32 weeks) including cases where there is a miscarriage or stillbirth. The Act also allows for unemployment benefits related to illness, especially if that illness is likely to bring about prejudice.

## *Basic Conditions of Employment Act, 1997*

**Overview:** This act deals with the regulation of working time, leave, remuneration, termination of employment and child and forced labour. It also deals with general employment matters such as temporary work.

**How can it be used?** You have the right and freedom to have children and express an intention to have children without fear of termination of employment. If you are being discriminated against in the workplace because of being pregnant, you can use this law. If you are being denied leave or being forced to do labour that is harmful to your health, you have a right to report this. It also outlines some conditions that are compulsory:

- Under Chapter 2, *regulation of working time*:
  - Section 7: working time must be regulated with regard for the health and safety of employees.
  - No employee can be required to work more than 45 hours in a week, no more than 9 hours in a day for people who work five days

a week, and no more than 8 hours for those who work more than five days a week.

- Under Chapter 3, *leave*:
  - As stated in the Labour Relations Act, 1995, it is unfair for a woman to be dismissed because of her pregnancy or for her intention to get pregnant. It is equally unfair for a woman to be stopped from resuming her work after maternity leave has been taken.
  - An employee is entitled to a minimum of four months of maternity leave, which can be taken any time in the four weeks leading up to the due date.
  - An employee who has a miscarriage in the 3rd trimester or gives birth to a stillborn baby can get six weeks of maternity leave after the event.
  - Pay during maternity leave is outlined in sections 34 and 37 of the Unemployment Insurance Act, 1966 (Act no. 30 of 1996).
  - Pregnant women or women who are breastfeeding their babies cannot be required to do work that is harmful to their health and must be provided with alternative work if their work is harmful in nature, for six months after the baby is born.

### ***Employment Equity Act, 1998***

**Overview:** This Act promotes equity in employment opportunities and ensures that no person is discriminated against because of their race, gender or disability.

**How can it be used?** All of the below can be used to ensure your right to equity in the workplace, because the Act:

- Promotes skills development for the disadvantaged;
- Establishes the Commission for Employment Equity (CEE) to ensure that employers promote equal opportunity and eliminate discriminatory hiring practices;
- Makes employers responsible for training and developing women in the workplace;
- Removes obstacles to promoting women;
- Obliges employers to narrow wage gaps between employees of different sexes who perform similar work;
- Promotes flexible working hours, time off during pregnancy and the improvement of maternity and childcare facilities.

# Access to Property



## Did You Know?

The Constitution provides everyone with the right to a safe, clean, healthy and sustainable environment. It also prohibits anyone from being deprived of property except in terms of the law. These rights are important because they allow for processes which can provide for marginalised groups to have their housing and environmental needs met. This is especially important for women since they are most vulnerable to issues of land, housing and environment and often do not have the financial means to address this. The laws that provide for these rights include - the Housing Act (1997) that makes provision for housing development for marginalised groups, the National Forests Act (1998) that can help women in mining affected communities defend their land against the harmful effects of mining, the Extension of Security of Tenure Act (1997) that allows for rights to remain on farm land that you have been residing on.





***Unlawful occupier*** means a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land (unless protected by other land laws) *Prevention of Illegal Eviction from Unlawful Occupation of Land Act 19 (1998)*

***Evict*** means to deprive a person against his or her will of residence on land or the use of land or access to water which is linked to a right of residence. *Extension of Security of Tenure Act 62 (1997)*



There are laws in place that contradict the Constitutional right to gender equality. These are the Communal Land Rights Act (2004) and the Traditional Leadership and Governance Framework Act (2003). These Acts undermine rural women's rights regarding land ownership and governance in that they allow for unprecedented power of traditional leaders, who are mostly men, and it is predominantly women who are disadvantaged by this. As of 2014, the Communal Land Rights Act has been struck down and is no longer in effect.<sup>xiv</sup>

Below are brief overviews of each of the laws relating to housing, land and the environment and how they can be used to ensure your rights are protected.

## *Housing Act, 1997*

**Overview:** This Act provides for the creation of a housing development process and a South African Housing Development Board.

**How can it be used?** This gives you the right to a sustainable housing development process and for those belonging to a marginalised group to have their housing needs be promoted by national, provincial and local government.

## *Rental Housing Act, 1999*

**Overview:** This Act states that in advertising a property to rent, in negotiating with a tenant or during the term of a lease, a landlord may not unfairly discriminate against such tenants or visitors of tenants, on the basis of race, gender, sex, pregnancy, marital status, sexual orientation, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, language and birth.

**How can it be used?** This Act gives you the rights around the renting of property. If you are being bullied or discriminated against by your landlord, this act can be used.

## *Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998*

**Overview:** This Act provides for a procedure of eviction where land is unlawfully occupied. The procedure excludes common-law remedies that usually apply to ownership rights. It also allows for eviction where occupation that was lawful to begin with but became unlawful later. The law requires

that proper notice be given to terminate any existing rights, and that additional notification of proceedings be given through the Court at least fourteen days prior to the hearing and that it includes notification of the proceedings, grounds of the proceedings, date of hearing and information regarding the rights of appearance.

**How can it be used?** The Act requires that an eviction only take place if it is just and equitable. This is determined after considering the rights and needs of disadvantaged groups such as elders, children, disabled persons and women headed households.

### *National Forests Act, 1998*

**Overview:** The preamble states that “everyone has the constitutional right to have the environment protected for the benefit of present and future generations”.

**How can it be used?** This Act gives you the right to an environment which is taken care of and is kept safe for future generations. Women who are defending their land against mining and other destructive activities can use this Act in their protest.

### *Restitution of Land Rights Act, 1994*

**Overview:** This Act provides for the restitution of land rights to any person who was dispossessed of their land after 19 June 1913 as a result of discriminatory laws or practices.

**How can it be used?** Section 2 of the Act specifies that a person who is entitled to restitution of a land right is someone who may be a man or a woman, as it defines the person as “he or she”.



### Did You Know?

The Restitution of Land Rights Act protects women from being denied their claims to restitution by chiefs or anyone else simply because they are women. It does not limit claims or inheritance to male descendants.

### *Extension of Security of Tenure Act, 1997*

**Overview:** This Act protects people occupying land in rural areas.

**How can it be used?** If you live on a farm or other piece of land in a rural area (that is, not in a proclaimed township), this Act provides specific requirements which must be fulfilled before you can be evicted. Your protections are stronger if you have lived there for more than 6 months, and stronger if you have lived there for more than ten years. People who were already resident on the land on 4 February 1997, or who have been on the land for more than a year, are considered to have consent from the owner and to be lawful occupiers. The owner must terminate consent before attempting to evict you. You may only be evicted if it is just and equitable, and the Court must take into account whether there are people from vulnerable groups being evicted, such as children, the elderly, or households headed by women. The Act requires government to invest money in development and helping occupiers of land secure tenure. Both occupiers and owners of land have the right to have their human dignity, privacy, freedom and security, freedom of religion, freedom of association and freedom of movement to be protected.

# Education and Training



## Did You Know?

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According to our Constitution, the State must take progressive measures to ensure that everyone's right to basic education is met. There are a number of laws in place to ensure this takes place. The Higher Education Act (1997) provides for equal access to higher education and the transformation of institutions of higher learning to take place to allow for this. The South African Schools Act (1996) allows for all children to have access to public school which affirms the right for girl children to access basic education. Other important laws include the responsibility of the state and the workplace to further education and training, protection from humiliation and harassment of school children being searched by superiors, among others.

Research has shown why people from age 7 to 18 do not attend school. What stands out here is that females have less money or funding for fees and that they have exponentially more family commitments than males. This is because absent parents in working class homes often shift responsibility to young women who should be in school.





***Higher Education*** means all learning programmes leading to a qualification that meets the requirements of the Higher Education Qualifications Framework *Higher Education Act 101 (1997)*

Below are brief overviews of each of the laws relating to education and skills development and how they can be used to ensure your rights are protected.

### ***Higher Education Act, 1997***

**Overview:** This Act provides for the creation of a Council of Higher Education that has equal numbers of men and women as members. This council will be informed by the institutional forum on issues of race and gender equity policies. This Act also calls for transformation in institutions that will assist with economics, human resources and development of South Africa. It provides for the regulation and monitoring of higher education institutions to ensure that they conduct themselves in a manner consistent with the law and with policy determined by the Minister for Higher Education.

**How can it be used?** This Act ensures that higher education institutions do not conduct themselves in a way that excludes people on any basis, and do not act in a manner that infringes human dignity, equality and freedom.

### ***Education Laws Amendment Act, 2007***

**Overview:** This Act is an amendment Act for a number of other education and training laws. It provides for minimum norms and standards for infrastructure and capacity in public schools; for random search and seizure and drug testing at schools and for the functions and responsibilities of a principal.

**How can it be used?** In cases where it is warranted to search a learner (sharp objects, weapons, drugs etc.) this Act provides protection so that the search is conducted by a person of the same gender, it is not conducted in view of any other learner, one adult witness of the same gender be present and the search does not extend to a body cavity of the learner. The same applies for urine sampling.

### *The National Education Policy Act, 1996*

**Overview:** This Act provides for the creation of a national education policy that should make sure nobody is unfairly discriminated against in any department or institution of education and that opportunities in this sector must recognise past injustice in terms of gender equality by actively improving the status of women. It also says that every person has the right to access basic education institutions.

#### **Did You Know?**

It is the responsibility of the education system to help develop students' moral, social, cultural, political and economic well-being while furthering democracy, human rights and peace.

**How can it be used?** This gives you the right to access education, no matter what your social or economic standing. This law affirms the rights of the girl child. This can be used when fighting for free sanitary pads, which is something that often causes young girls to miss school. It can also help in the fight against young women having to head up households.

### *South African Schools Act, 1996*

**Overview:** This act provides that all children should have access to public schools, and a child cannot be discriminated against in any way when applying to a public school.

**How can it be used?** This gives you the right for your child to be admitted to a public school, even if you cannot afford to pay for it. This again affirms the right for the girl child to get a basic education.

## *Skills Development Act, 1998*

**Overview:** This Act provides for the improvement of skills in the South African workforce. The Act is a framework for the strategies that can be implemented on a national, sector and workplace level. Part of this framework is the provision of learnerships, a National Skills Fund, employment services and a National Economic and Development Council (NEDLAC).

**How can it be used?** This Act makes the State and companies responsible for skills development for disadvantaged groups (including women) and training and development in the workplace. It also requires that the voting members of NEDLAC as nominated and appointed by the minister must include a woman who represents the interests of women.



### *What is NEDLAC?*

The National Economic and Development Council is the vehicle by which Government, labour, business and community organisations will seek to cooperate, through problem-solving and negotiation, on economic, labour and development issues and related challenges facing the country.

NEDLAC works with the following areas of policy:

- Public finance and monetary
- Labour market
- Trade and industrial
- Development



# Criminal



## Did You Know?

There are laws in place that protect witnesses and victims of gender-based violence from intimidation or harassment. The Office for Witness Protection is created under the Witness Protection Act 112 (1998) and is an independent, covert office which provides protection and support to witnesses so they don't feel intimidated or unsafe during a trial. The Criminal Procedure Act (1997) provides for victims to have samples taken from them free of harassment or undignified methods. It also allows for the witness to be protected from the perpetrator by allowing for the perpetrator to be detained.



South Africa's Witness Protection Programme is internationally recognised and applauded for its success.<sup>xv</sup>



**Witness** means any person who is or may be required to give evidence or who has given evidence in any proceedings (*Witness Protection Act 112, 1998*)

Below are brief overviews of each of the laws relating to criminal proceedings and how they can be used to ensure your rights are protected.

### *Witness Protection Act, 1998*

**Overview:** This Act provides for the establishment of witness protection and the regulation of the powers and functions of the Office for Witness Protection. This Act states that protection may be given to a witness or related person with regard to: 26.4- rape or compelled rape as contemplated in sections 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively or 26.10- any sexual offence against a child or a person who is mentally disabled as contemplated in Part 2 of Chapter 3 or the whole of Chapter 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively or trafficking in persons for sexual purposes by a person or commercial carrier as contemplated in section 71 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

**How can it be used?** This means that if a woman wants to testify or press charges for rape or domestic violence they can apply to use this law to get protection.

### *Criminal Procedure Act, 1977*

**Overview:** This Act deals with the procedures and the manner in which criminal cases are dealt with by various officials.

**How can it be used?** Chapter 3 of this Act provides for the right of a person who is having fingerprints, a body print or buccal sample (taken from inside the mouth) taken to be treated appropriately for their gender and age. Buccal

samples being taken from anybody, must be done by somebody of the same gender, and in a decent manner. When a body-print is being taken, to check if somebody has a feature which is recognisable or distinguishable, this must be done by a police officer of the same gender.

It also provides that if the person who has raped or attacked you pleads that they cannot understand the terms of the court proceedings, you have the right for them to be detained in a psychiatric hospital or prison while the judge makes a decision about the case.

The Act also gives you the right to be present and contribute to a decision in an application for parole, day parole or correctional supervision of somebody who has been convicted of raping you.

# Health



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## Did You Know?

The constitution protects reproductive rights, and there are laws that enforce this.

There are laws which protect a woman's rights to have control over her own body including reproduction, these rights are protected both by the Constitution and national health Acts. Having control over your body means that you can make decisions about your own body, without the input of anybody else, this includes decisions about termination of pregnancy, it also means that you can choose to not have children and be sterilised if you consent to it and if you are over 18 years old.



**“Sterilisation”** means a surgical procedure performed for the purpose of making the person on whom it is performed incapable of procreation, but does not include the removal of any gonad (*Sterilisation Act 44, 1998*)



58% of married women in South Africa, aged 15-49, do not want any more children (including the 8% who are sterilised or have sterilised partners).<sup>xvi</sup>

Below are brief overviews of each of the laws relating to health and how they can be used to ensure your rights are protected.

### *Choice on Termination of Pregnancy Act, 1996*

**Overview:** This Act provides that during the first 12 weeks of pregnancy, a pregnancy may be terminated upon request from the woman.

**How can it be used?** This means that if termination is within the first 12 weeks, women may not be subject to questioning or medical tests. The termination is simply by request. It is only after 13 weeks that termination is permitted for specific reasons, and that the woman may be asked for the reason. Some of the reasons for which termination beyond 12 weeks is permitted are if the pregnancy is a result of rape, if the pregnancy would pose a threat to the woman's mental or physical health, if the pregnancy would affect the social or economic circumstances of the woman and so on.

In terms of this Act, the State is to promote the provision of non-mandatory and non-directive counselling, before and after the termination of a pregnancy.

### *Sterilisation Act, 1998*

**Overview:** This act provides the rules for sterilisation, and the issues of consent surrounding this.

**How can it be used?** This Act allows consenting adults over the age of 18 the right to be sterilised, in line with the Constitution's protection of one's right to make decisions and have control over one's body including decisions about reproduction.

Section 2.1- No person is prohibited from having sterilisation performed on him or her if he or she is— (a) capable of consenting; and (b) 18 years or above. (2) A person capable of consenting may not be sterilised without his or her consent. This Act prioritises consent in the sterilisation process.

# Family



## Did you Know?



In South Africa, ukuthwala is the practice of abducting young girls and forcing them into marriage, often with the consent of their parents. However, according to the Marriage Act (1961), the marriage of any girl under the age of 15 is prohibited unless the consent of the Minister of Home Affairs is obtained. Therefore, these marriages are unlawful unless consent is obtained, and if it is obtained where a girl has been kidnapped, the Minister of Home Affairs could be held responsible for improperly providing consent. There are also other important laws relating to family matters that protect the rights of women. For example, the Magistrates Court Act (1944) allows all women to have equal access to the necessary courts relating to divorce, including women married under customary law. See below for more laws like this.

***Ukuthwala*** is a reality in South Africa where “more than 90 000 South African girls between the ages of 12 and 17 were either married, divorced, separated, widowed or living with a partner as husband and wife in 2016”.<sup>xvii</sup>





A “***maintenance order***” means any order for the payment, including the periodical payment, of sums of money towards the maintenance of any person issued by any court in the Republic, and includes, except for the purposes of section 31, any sentence suspended on condition that the convicted person make payments of sums of money towards the maintenance of any other person (*Maintenance Act no 99, 1998*)

***Customary Law*** means the customs and usages traditionally observed among the indigenous African peoples of South Africa and which form part of the culture of those peoples (*Recognition of Customary Marriages Act 120, 1998*)

Below are brief overviews of each of the laws relating to family matters and how they can be used to ensure your rights are protected.

### ***Magistrates Courts Act, 1944***

**Overview:** This Act (as amended) gives the Regional court jurisdiction for divorces including in terms of the Recognition of Customary Marriages Act.

**How can it be used?** This Act empowers all women, including women married under customary law, to access the Magistrates’ courts and hearing of matters related to divorce or the nullity of marriage. The High Court’s jurisdiction is provided by the Constitution and the Recognition of Customary Marriages Act.



## *Maintenance Act, 1998*

**Overview:** This law deals with the matters around the paying of maintenance and recognises that both parents have the responsibility to look after the well-being of the child, including the payment of maintenance if necessary, and whether the parents are married to one another or not.

**How can it be used?** This gives you the right to go to the courts and obtain an order compelling the child's other parent to pay maintenance.

## *Marriage Act, 1961*

**Overview:** The Marriage Act (1961) deals with the formalities and requirements for a valid marriage. It applies to all South Africans.

**How can it be used?** This law includes a specified marriageable age. No one under the age of 18 may get married without the consent of his or her parents or legal guardians. In addition, no boy under 18 or girl under 15 may marry without the special consent of the Minister of Home Affairs. The Act protects girl children from unlawful marriages and this extends to people who live under customary law.

## *Recognition of Customary Marriages Act, 1998*

**Overview:** This law deals with matters surrounding customary marriages, their validity as well as the regulation thereof. It outlines the conditions under which a customary marriage is valid, including the registration of the marriage.

**How can it be used?** This gives you the right as a wife in a customary marriage (in section 6) to be equal with your husband. You have the right to full status

and capacity when acquiring and disposing of assets and you can enter into contracts. Young women are also protected by this law, because this law says that even in a customary marriage, it must happen between two consenting adults over the age of 18. You also have inheritance rights as a customary wife.

### *Natural Fathers of Children Born out of Wedlock Act, 1997*

**Overview:** This Act makes provision for the following:

- Access to custody and guardianship of children born out of wedlock by their natural fathers.
- A limitation to publishing the particulars of applicants of enquiries
- To provide for the notification of natural fathers of any intended adoption of their children born out of wedlock
- To amend the Births and Death Registration Act so as to further regulate the alteration of the surname of certain minors.

**How can it be used?** While this Act is directed at fathers and not mothers, it is still important as it determines the rights of the natural father of children born out of wedlock. These rights, when applied in court, will determine how custody will be granted, the surname of the child, and whether the father has a say in the adoption of the child.

### *Children's Act, 2005*

**Overview:** This law deals with all matters concerning children, including guardianship, custody, fostering and adoption. In terms of section 25(2) of the Constitution, in all matters concerning a child, the best interests of the child are paramount. This means that when decisions are made about the

child, what is best for the child is more important than what either parent wants.

As far as adoption is concerned, consent must be given by both the mother and father, regardless of their relationship to each other at the time of conception or birth. There are also provisions made for when you are allowed to give a child up for adoption without the consent of the biological father.

**How can it be used?** You have the right to give your child up for adoption if you so wish, with the consent of the biological father.

### Did You Know?

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There are a number of circumstances where you do not need the consent of the biological father, these are:

- If the child is born out of wedlock and the father has not claimed or acknowledged the child.
- If the child is a result of an incestuous relationship.
- If the child is a result of rape.
- If the father has failed to respond to a notice of adoption within 30 days.
- If the father has consistently failed to fulfil his parental responsibilities during the last 12 months. This applies also to the mother.

# Elections



## Did You Know?



The Constitution provides for every citizen to have the right to free, fair and regular elections. There are also laws in place that must ensure that elections are in fact free and fair. These are the Electoral Commission Act (1996) and the Electoral Act (1998). The former provides for an Electoral Commission to ensure that voting is free and fair.

Out of the 26 million registered voters in South Africa, 55% are women.



***Election*** means any election for a national, provincial or local legislative body in terms of any law (*Electoral Commission Act 51, 1996*)



Below are brief overviews of two important laws relating to elections and how they can be used to ensure your rights are protected.

## ***Electoral Commission Act, 1996***

**Overview:** This Act provides for the establishment, composition and matters related to both an Electoral Commission and an Electoral Court. This applies

to elections at local, provincial or national level. The duties of these bodies include determining ballot questions, ascertaining the views of voters, declaring and determining a referendum for voters etc.

**How can it be used?** This Act requires that a representative of the Commission on Gender Equality established by section 55 119(1) of the Constitution must be part of the panel [section 6.3 c]. The Act therefore provides a mandate under which gender equality views must be represented on the Electoral Commission.

### *Electoral Act, 1998*

**Overview:** This Act provides for the regulation of all elections: The National Assembly, the provincial legislatures and municipal councils. The Electoral Commission is mandated to administer this Act.

**How can it be used?** Section 9.1. (d) states that “no registered party or candidate may [...] discriminate on the grounds of race, ethnicity, sex, gender, class or religion in connection with an election or political activity”. The Act therefore provides protection from any gender-based discrimination related to the elections and relevant matters.

# Media



## Did you Know?

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There are a number of laws in place that regulate how gender-based violence is depicted in the media. Freedom of expression does not allow others to infringe on your right to be protected from discrimination and hate speech based on your gender, according to section 16(2) of the Constitution. The Film and Publications Act, 1996 allows for the right to report excessive and unnecessary depictions of gender-based violence. In addition, the Telecommunications Act 1996 encourages the empowering of women in the radio industry.



Although there is underrepresentation of black women in the media, things are getting better. Black women make up **30% of top managerial positions in 2018**, which is up from just 6% in 2006.



**Broadcasting** means any form of unidirectional electronic communication intended for reception by the public or sections of the public or subscribers to any broadcasting service (*Electronic Communications Act, 36 of 2005, s1*).

**Child pornography** (as defined in the Films and Publications Act, 65 of 1996) includes any image, however created, or any description of a person, real or simulated, who is or who is depicted, made to appear, look like, represented or described as being, under the age of 18 years:

- Engaged in sexual conduct;
- Participating in, or assisting another person to participate in, sexual conduct; or
- Showing or describing the body, or parts of the body, of such a person in a manner or in circumstances which, within context, amounts to sexual exploitation, or in such a manner that it is capable of being used for the purposes of sexual exploitation.

Below are brief overviews of each of the laws relating to media and how they can be used to ensure your rights are protected.

### ***Films and Publications Act, 1996***

**Overview:** This act provides for restrictions of what is shown in films and publications. Any content (Chapter 3 section 16.2) which shows sexual conduct that undermines the dignity of anybody, degrades anybody, incites violence or shows hate to one group must be approved by the board before it is distributed. It calls for a Film and Publication Council, that has to make

sure films are representative of South Africa in terms of race, ethnicity, gender and religion. In this Act, domestic violence is defined as depictions of physical, emotional, sexual, verbal or psychological abuse.

***How can it be used?*** This law can be used when there are unnecessary and excessive depictions of violence toward women, explicit depictions of rape and sexual assault. You have the right to report these instances, particularly if what is being shown undermines the dignity of somebody or incites violence. This is a relevant law if we are to change societal perspectives and other forms of structural oppression. This law also states that publications will be refused classification if they incite violence, encourages the hatred of a specific group or contains child pornography.

### ***Electronic Communications Act 36 of 2005***

**Overview:** This Act regulates all electronic communications, including particular broadcasting over any medium, including television, radio and the Internet; as well as cellular communications.

Some of the objects of the Act are to ensure that services are provided by persons from a diverse range of communities within the Republic, that broad-based black economic empowerment is promoted, with particular attention to the needs of women, and that programming reflects the need of vulnerable groups such as women and people with disability.

**How can it be used?** You have the right to be empowered in the electronic communications industry, and for women's rights to be advanced, both as providers and users of electronic services.



## How to Access these Rights?

There are a number of ways that we can address GBV and begin to achieve gender equality. One of these ways is to have active involvement from all sectors of society. We need civil society, private sector, government institutions and trade unions to all recognise the importance of gender equality, and actively work toward it. One of the ways that this can be done is to hold workshops and seminars in their spaces that are aimed at educating all members of society—both women and men—about the systemic oppression of women.

It is not enough that women are educating themselves about gender issues, men must also be educated and brought into the conversation so that we begin to shift perspectives and create new norms, values, and practices that promote gender equality. It is important that the potential perpetrators of violence and oppression are educated. Gender Based Violence is not a women's issue. It is a society issue. Organisations also need to take decisive action when it comes to gender equality, any societal perspective of equality needs to be backed up by policy, and by implementing that policy. It is not enough that national policy allows for gender equality, there need to be internal processes and policies in organisations, including trade unions which

### What can trade unions do?

- Hold workshops to educate women and men on gender equality.
- Involve women in decision making processes.
- Develop policies which support and contribute to gender equality.
- Support initiatives all around the country that aim to eliminate GBV.
- Insist on clear processes and easily accessible steps to report harassment in the workplace.

allow women to report harassment, thrive in the workplace and achieve gender equality. Finally, along with the need for perspective change, popular education and organisational policies, democratic processes must be strong. South Africa's constitution and national policy allow for, and encourage gender equality. We must claim our rights, and use them to achieve equality, as they were intended. Below are a number of organisations that can help you claim your rights with legal advice.

## Who to contact

### Gauteng

Department of Justice & Constitutional Development and Gender Directorate	011 332 9067/9000 OR 011 331 0440 150 Commissioner St, Marshalls Town, Johannesburg <a href="http://www.justice.gov.za/">http://www.justice.gov.za/</a>
Section 27	011 356 4100 First Floor, South Point Corner Building 87 De Korte Street Braamfontein Johannesburg 2017 <a href="http://section27.org.za/">http://section27.org.za/</a>
Legal Aid Board: Justice Centre	(012) 664 2921 144 Cantonment Street, Selborn Centre, Lyttelton, Pretoria. <a href="http://www.legal-aid.co.za/">http://www.legal-aid.co.za/</a>
Equality Court & Magistrate Court	011 491 5000 26 Fox street, Ferreiras Dorp, Johannesburg. <a href="http://www.justice.gov.za/about/sa-courts.html">http://www.justice.gov.za/about/sa-courts.html</a>
Commission for Gender Equality	011 403 7182 2 Kotze Street, Johannesburg <a href="http://www.cge.org.za/">http://www.cge.org.za/</a>
South African Human Rights Commission	011 877 3750 2nd Floor, Braampark Forum 3, 33 Hoofd Street, Braamfontein <a href="https://www.sahrc.org.za/">https://www.sahrc.org.za/</a>
Wits Law Clinic	011 717 8562 Wits University, Johannesburg <a href="https://www.wits.ac.za/lawclinic/">https://www.wits.ac.za/lawclinic/</a>
University of Pretoria Law Clinic	011 420 4155 1107 South Street, Hatfield, Pretoria. <a href="https://www.up.ac.za/up-law-clinic-home-page">https://www.up.ac.za/up-law-clinic-home-page</a>

Legal Resources Centre	011 836 9831 20 Albert Street, Marshalltown, Johannesburg <a href="http://resources.lrc.org.za/">http://resources.lrc.org.za/</a>
People Opposed to Women Abuse	011 642 4345 Mitchell St, Berea, Johannesburg <a href="https://www.powa.co.za/POWA/">https://www.powa.co.za/POWA/</a>
Centre for Study of Violence and Reconciliation	011 403 5650 Floor 3, Braamfontein, 33 Hoofd Street, Braampark. <a href="https://www.csvr.org.za/index.php">https://www.csvr.org.za/index.php</a>
Tshwaranang Legal Advocacy Centre	011 403 4267 132 Fox Street, building, level 4, OPH, Johannesburg. <a href="https://www.tlac.org.za/">https://www.tlac.org.za/</a>
ProBono Johannesburg	011 339 6080 1st Floor West Wing Women's Jail 1 Kotze Street, Braamfontein <a href="http://www.probono.org.za/contact/">http://www.probono.org.za/contact/</a>

## Western Cape

Department of Justice and Constitutional Development	021 462 5471 OR 021 469 4000 30 Queen Victoria Street, AA Building, Cape Town <a href="http://www.justice.gov.za/">http://www.justice.gov.za/</a>
Equality Court and Magistrates Court	021 401 1556 7-11 Parade Street, Cape Town City Centre <a href="http://www.justice.gov.za/about/sa-courts.html">http://www.justice.gov.za/about/sa-courts.html</a>
South African Human Rights Commission	021 426 2277 132 Adderley Street <a href="https://www.sahrc.org.za/">https://www.sahrc.org.za/</a>
Commission for Gender Equality	021 426 4080 5th Floor ABSA Building, 132 Adderly Street, Cape Town <a href="http://www.cge.org.za/">http://www.cge.org.za/</a>
Women's Legal Centre	021 424 5660

	Constitution House, 124 Adderley Street & Church Street, Cape Town City <a href="http://www.wlce.co.za/about-us/">http://www.wlce.co.za/about-us/</a>
Centre for Study of Violence and Reconciliation	021 447 2470 501 Premier Centre, 451 Main Road <a href="https://www.csvr.org.za/index.php">https://www.csvr.org.za/index.php</a>
Legal Aid Board	(021) 861 3000 Shiraz House, Brandwacht Office Park, Trumali Street, Stellenbosch <a href="http://www.legal-aid.co.za/">http://www.legal-aid.co.za/</a>
Ilitha Labantu	021 633 2383 26A Ny 22 St, Guguletu, Heideveld <a href="https://ilithalabantu.org.za/">https://ilithalabantu.org.za/</a>
Legal Aid Clinic- UCT	021 650 3775 Room 436 4th Floor Kramer Law School Building, 1 Stanley Avenue, Rondebosch <a href="http://www.law.uct.ac.za/">http://www.law.uct.ac.za/</a>
ProBono Cape Town	087 806 6070/1/2 Suite 200, 57 Strand Street, Cape Town <a href="http://www.probono.org.za/contact/">http://www.probono.org.za/contact/</a>

## Eastern Cape

Department of Justice and Constitutional Development	040 608 6601 OR 043 702 7000 3 Phillip Frame Road, Waverley Park, Chiselhurst, East London <a href="http://www.justice.gov.za/">http://www.justice.gov.za/</a>
Legal Aid Board: Justice Centre	(041) 363 8863 5 Mangold Street, Newtown Park, Port Elizabeth <a href="http://www.legal-aid.co.za/">http://www.legal-aid.co.za/</a>
South African Human Rights Commission	043 722 7828/21/25 3-33 Phillip Frame Road, Waverley Park, Chiselhurst, East London <a href="https://www.sahrc.org.za/">https://www.sahrc.org.za/</a>

Commission for Gender Equality	043 722 3489 3– 33 Phillip Frame Road, Waverly Park <a href="http://www.cge.org.za/">http://www.cge.org.za/</a>
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## Northern Cape

Department of Justice and Constitutional Development	053 839 0000 OR 053 802 1300 Cnr Stead & Knight Streets, New Public building (8th floor) <a href="http://www.justice.gov.za/">http://www.justice.gov.za/</a>
Legal Aid Board: Justice Centre	(021) 861 3000 Shiraz House, Brandwacht Office Park, Trumali Street, Stellenbosch <a href="http://www.legal-aid.co.za/">http://www.legal-aid.co.za/</a>
South African Human Rights Commission	054 332 3993/4 45 Mark and Scot Road, Ancorley Building, Upington <a href="https://www.sahrc.org.za/">https://www.sahrc.org.za/</a>
Commission for Gender Equality	053 832 0477 143 Du Toitspan Road, Kimberley <a href="http://www.cge.org.za/">http://www.cge.org.za/</a>

## North West

Department of Justice and Constitutional Development	018 397 7000/7014 Ayob Building, 22 Molopo Road, Mafikeng <a href="http://www.justice.gov.za/">http://www.justice.gov.za/</a>
Legal Aid Board: Justice Centre	(051) 412 8040 or (051) 412 8041 or (051) 412 8048 or (051) 412 8046 or (051) 412 8051 or (051) 412 8050 PHG Building, 196 Nelson Mandela Drive, Brandwag, Bloemfontein <a href="http://www.legal-aid.co.za/">http://www.legal-aid.co.za/</a>

South African Human Rights Commission	014 592 0694 25 Heystek Street, Rustenburg <a href="https://www.sahrc.org.za/">https://www.sahrc.org.za/</a>
Commission for Gender Equality	018 381 1505 38 Molopo Road, Mafikeng <a href="http://www.cge.org.za/">http://www.cge.org.za/</a>

### Free State

Department of Justice and Constitutional Development	051 407 1800 53 Charlotte Maxeke St, Bloemfontein Central, Bloemfontein <a href="http://www.justice.gov.za/">http://www.justice.gov.za/</a>
South African Human Rights Commission	051 447 1130 18 Kellner Street, Bloemfontein <a href="https://www.sahrc.org.za/">https://www.sahrc.org.za/</a>
Commission for Gender Equality	051 430 9348 49 Charlotte Maxeke Street, 2nd Floor, Fedsure Building, Bloemfontein <a href="http://www.cge.org.za/">http://www.cge.org.za/</a>
University of Free State Law Clinic	051 401 2451 University of the Free State, Equitas Building UFS Bloemfontein Campus <a href="https://www.ufs.ac.za/law/public-law-divisions/ufs-law-clinic-home">https://www.ufs.ac.za/law/public-law-divisions/ufs-law-clinic-home</a>

### Kwa-Zulu Natal

Department of Justice and Constitutional Development	031 301 5330 OR 031 372 3007 2 Devonshire Pl, Anton Lembede St, Durban Central <a href="http://www.justice.gov.za/">http://www.justice.gov.za/</a>
South African Human Rights Commission	031 304 7323/4/5 First Floor, 136 Margaret Mncadi, Durban <a href="https://www.sahrc.org.za/">https://www.sahrc.org.za/</a>

Commission for Gender Equality	031 305 2105 40 Dr. A.B Xuma Road Suite 1219, Commercial City, Durban <a href="http://www.cge.org.za/">http://www.cge.org.za/</a>
Legal Aid: justice Centre	031 717 8450 7th Floor Charter House, Cnr Crompton & Union Street, Pinetown <a href="http://www.legal-aid.co.za/">http://www.legal-aid.co.za/</a>
Legal Resources Centre	031 301 7572 11th Floor, Aquasky Towers, 275 Anton Lembede Street, Durban. <a href="http://lrc.org.za/">http://lrc.org.za/</a>
UKZN Law Clinic	031 260 1111 289 Mazisi Kunene Rd, Berea <a href="https://law.ukzn.ac.za/LawClinic.aspx">https://law.ukzn.ac.za/LawClinic.aspx</a>
ProBono Durban	031 301 6178 303 Anton Lembede Street, Suite 701, 7th Floor, Durban Club Chambers, Durban <a href="http://www.probono.org.za/contact/">http://www.probono.org.za/contact/</a>

## Limpopo

Department of Justice and Constitutional Development	015 287 2000/5577 92 Bok St, Polokwane Central, Polokwane. <a href="http://www.justice.gov.za/">http://www.justice.gov.za/</a>
South African Human Rights Commission	015 291 3500 First Floor, Office 102, Library Garden Square, Corner of Schoeman and Grobler Streets, Polokwane <a href="https://www.sahrc.org.za/">https://www.sahrc.org.za/</a>



Commission for Gender Equality	015 291 3070 Cnr. Grobler & Schoeman Streets, 1st Floor, 106 Library Gardens Square, Polokwane <a href="http://www.cge.org.za/">http://www.cge.org.za/</a>
Legal Aid: justice Centre	(015) 296 0117 or (015) 296 0148 3 Cormar Park, Rhodes Drift Avenue, Bendor, Polokwane <a href="http://www.legal-aid.co.za/">http://www.legal-aid.co.za/</a>

## **Mpumalanga**

Department of Justice and Constitutional Development	031 753 9300 24 Brown Street, Nedbank Centre 4th Floor, Nelspruit. <a href="http://www.justice.gov.za/">http://www.justice.gov.za/</a>
South African Human Rights Commission	013 752 5890/5870 34 Brown Street, Mbombela (Nelspruit) <a href="https://www.sahrc.org.za/">https://www.sahrc.org.za/</a>
Commission for Gender Equality	013 755 2428 32 Belle Street Office 212-230, Nelspruit <a href="http://www.cge.org.za/">http://www.cge.org.za/</a>
Legal Aid: justice Centre	(015) 296 0117 or (015) 296 0148 3 Cormar Park, Rhodes Drift Avenue, Bendor, Polokwane <a href="http://www.legal-aid.co.za/">http://www.legal-aid.co.za/</a>

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