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SOUTH AFRICAN SOCIAL SECURITY AGENCY

[ *paying the right social grant, to the right person,  
at the right time and place. NJALO!* ]

**UNIVERSITY OF CAPE TOWN – SAFER COURSE**

**Overview by SASSA: Western Cape Region –  
Operations Management Unit  
13 August 2015**



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# Contents of Presentation

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# SASSA Establishment

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- It is government's priority to drastically reduce poverty through accelerated economic growth and the strengthening of the social security safety net
- Social Assistance program has been identified as government's most effective poverty alleviation tool
- SASSA established as a Schedule 3 A National Public Entity in terms of the PFMA in response to the continued shortcomings experienced in the program
- The SASSA Act and the Social Assistance Act came into effect on 01 April 2006 and provided the legal framework for the SASSA establishment

# SASSA Establishment

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## Reasons:

- To improve service delivery to public.
- To create uniformity in administration and approach
- To eradicate fraud and corruption
- Customer centered service
- Introduce efficiencies and cost effectiveness

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# National Overview

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- The number of beneficiaries of social assistance has increased from about 3.5 million in 1999 to more than 16.6 million now
- Nearly 12.4 million children now have access to social assistance. Include more than 11.7 million children benefiting from the child support grant, more than 500,000 benefiting from foster care grant and over 127,000 benefiting from the care dependency grant
- More than 3 million elderly people receive the old age grant and 1.1 million people receive the disability grant
- Expenditure on social security increased from R36,9 billion in 2003/04 to nearly R120 billion in 2014/15

# Regional Overview

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- The number of beneficiaries of social assistance has increased to approximately 16.7 million – Nationally as on 30 June 2015
- Western Cape as on 30 June 2015 approximately 1,454,260 (8.66%) grants in payment – including adults and children:

<b>Grant Type</b>	<b>Total</b>
Old Age	296,583
War Veterans	83
Disability	155,291
Grant-in-Aid	12,592
Care Dependency	12,203
Foster Child	30,720
Child Support	946,788

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# Regional Overview

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- As on 30 June 2015 approximately 1,454,260 grants in payment – including adults and children in the Western Cape
- **Population Census 2011 – Western Cape (5,822,735):**
  - Vredendal – 116,915
  - Vredenburg – 274,852
  - Worcester – 380,495
  - Paarl – 408,995
  - Caledon – 258,176
  - Oudtshoorn – 120,700
  - George – 453,565
  - Beaufort West – 71,011 (Sub-Total 2,082,709 = 35.76%)
  - Cape Town Metropolis 3,740,026 (64.24%)



# Western Cape Organogram

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- Regional Office in Cape Town, 5 District and 16 Local offices

DISTRICT	LOCAL
<b>Eden /Karoo District (District Office in George)</b>	<b>George (including Plettenberg Bay and Riversdale as satellite offices)</b>
	<b>Beaufort West</b>
	<b>Oudtshoorn</b>
<b>Boland/Overberg District (District Office in Paarl)</b>	<b>Paarl</b>
	<b>Worcester</b>
	<b>Caledon</b>
<b>West Coast District (District Office in (Vredenburg))</b>	<b>Vredenburg (including Piketberg as satellite office)</b>
	<b>Vredendal</b>
<b>Cape Metropole 1 District</b>	<b>Athlone (including Langa as satellite office)</b>
	<b>Wynberg</b>
	<b>Bellville</b>
	<b>Khayelitsha</b>
<b>Cape Metropole 2 District</b>	<b>Gugulethu (including Nyanga as satellite office)</b>
	<b>Cape Town (including Atlantis as satellite office)</b>
	<b>Mitchells Plain</b>
	<b>Eerste River</b>

# Western Cape Services

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Local Offices	Service Points	Pay Points
Athlone	5	8
Beaufort West	9	12
Bellville	9	12
Caledon	22	26
Cape Town	6	9
Eerste River	11	12
George	32	44
Gugulethu	4	8
Khayelitsha	5	5
Mitchells Plain	4	7
Oudtshoorn	21	19
Paarl	18	14
Vredenburg	36	30
Vredendal	27	26
Worcester	20	29
Wynberg	7	15
<b>TOTAL</b>	<b>236</b>	<b>276</b>

## Legal Framework: Grants

- Social Assistance provided in terms of the following legal frameworks-
  - Constitution: Section 27(1)(c) – Right to Access
  - South African Social Security Agency Act (Act 9 of 2004)
  - Social Assistance Act, 2004 (Act 13 of 2004), as amended
  - Regulations, 2008
  - Promotion of Access to Information Act (Act 2 of 2000)
  - Promotion of Administrative Justice Act (Act 3 of 2000)
  - Promotion of Equality and Prevention of Unfair Discrimination Act (Act 4 of 2000)
  - Public Finance Management Act (Act 1 of 1999)
- Social Assistance is non- contributory fund
- Social Assistance is means tested to ensure that the most needy do qualify – not universal system

## Defining Social Security - Elements of Social Security

- Private savings – people voluntary save for unexpected contingencies {Life or Endowment policies}
- Social insurance – joint contributions by employer and employee to pension funds
- Social assistance – non-contributory and income tested benefits provided by the State
- Social relief – short term measures to tide people over a crisis

- **Section 14(2) of Social Assistance Act stipulates the following:**
  - *In considering an application made in terms of subsection (1), the Agency may conduct an investigation and request additional information*
- **Section 14(4) stipulates the following:**
  - *No person may divulge any personal information of an applicant furnished in respect of an application except-*
    - *To a person who requires it in order to perform a function in terms of this Act;*
    - *When required to do so by law or an order of court; or*
    - *With the consent of the applicant.*

- **Section 14(5) stipulates the following:**
  - *If any information supplied by a beneficiary to the Agency in an application for a grant materially changes after that beneficiary has submitted that application, he or she must as soon as is reasonable possible after the change occurs, inform the Agency thereof.*
- **Section 21(1) – (3) stipulates the following:**
  - *A person is guilty of an offence if such person, when applying for social assistance, furnishes information which he or she knows to be untrue or misleading in a material respect or makes a representation which to his or her knowledge is false, in order that he or she or another person may-*
    - *Obtain or retain social assistance to which he or she is not entitled in terms of this Act; or*



- *Obtain social assistance in excess of that to which he or she is entitled in terms of this Act.*
- *If any person receives social assistance knowing that he or she is not entitled thereto, or is not entitled to the full amount which he or she is receiving, and he or she fails to inform the Agency thereof, he or she is guilty of an offence.*
- *A beneficiary who knowingly fails to inform the Agency of any material change of information contemplated in section 14(5), is guilty of an offence.*

- **Section 16(1) of South African Social Security Agency Act stipulates the following:**
  - *Subject to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), and the Promotion of Access to Information Act, 2000 (Act No.2 of 2000), no person may disclose any formation submitted in connection with any application or instruction for or in respect of a grant, payment or assistance made available by the Agency, unless he or she is ordered to do so by court of law or unless the person who made such application consents thereto in writing.*



## **Grant for the Aged: Qualifying criteria**

- Female – attained the age of 60
- Male – attained the age of 60 – with effect from 1 April 2010
- Must be South African citizen, Permanent RSA resident or Refugee
- Must be resident in South Africa at the time of application
- Complies with the means test
- Not maintained in one of the following institutions:-
  - Prison
  - Psychiatric institution
  - State home for the aged
  - Care and treatment centre
  - Treatment centre for drug dependents

## **Grant for the Disabled: Qualifying Criteria**

- Disabled person attained the age of 18 years
- Disability confirmed by medical report
- Assessment has to confirm whether disability is permanent or temporary (6 up to 12 months)
- Degree of disability – makes incapable of entering labour market
- Does not without good reason refuse medical or other treatment recommended
- SA citizen or permanent resident or a refugee residing in SA at the time of application
- Complies with the means test
- Not maintained in one of the institutions indicated

## Grant-in-Aid: Qualifying Criteria

- Person must be in receipt of an older person's grant, disability grant or a war veteran's grant
- The person due to his or her physical or mental condition be certified by a medical officer or medical practitioner as requiring regular attendance by another person
- Medical assessment which indicate whether the person require regular attendance
- Grant-in-aid is not payable to a person maintained in any institution subsidized by the State

## Foster Child Grant: Qualifying Criteria

- A foster parent can be a South African citizen, Permanent RSA resident or a Refugee
- The child is under the age of 18 years
- Was placed in the custody of the foster parents in terms of the Child Care Act
- Foster parents must be resident in the Republic at the time of the application of the grant
- RSA citizenship of the foster child(ren) and foster parent(s) is not a requirement
- Process in place to foster placement of non-South African children
- Complies with the prescribed conditions
- Not means tested

## **Care Dependency Grant: Qualifying Criteria**

- The child is under the age of 18 years
- Child must receive permanent care due to his/her severe mental or physical disability
- Disability confirmed by medical report
- Parent or a foster parent or primary care giver must be resident in the Republic at the time of the application for the grant
- Parents must be South African citizens, Permanent RSA residents or a Refugee
- Child must not be in an institution (including special schools)
- Complies with the prescribed conditions and the means test
  - Income of parent – single must not exceed R169,200.00 p.a
  - Income of parent's – married must not exceed R338,400.00 p.a

# Grant Types

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## Child Support Grant

### Purpose of the grant

- Supplement income to poor families with children
- Other services provided

### Qualifying criteria

- The child must have been born after 31 December 1993
- Grant paid to primary care-giver who is a person whether related or not to the child who takes primary responsibility for the daily care needs of the child
- Primary care-giver must not receive remuneration for taking care of the child
- Primary care-giver (non parent) qualifies for a maximum of six children
- Parent/care-giver must be South African citizen, Permanent RSA resident or a Refugee
- Complies with the prescribed conditions and the means test
  - Income of parent – single must not exceed R 39,600.00 pa.
  - Income of parent's – married must not exceed R79,200.00 pa.

# Grant Types

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## **Documentation required**

- Bar coded identity document
- Alternative documentation
- Thirteen digit ID number for child/ren (birth certificate)
- Proof of refugee status – Section 24 permits
- Refugee barcoded ID document
- Proof of assets and income
- Last three months bank statement
- Discharge papers – war veteran's grant
- Medical certificate – disability and care dependency
- Marriage certificate (if married)
- Death certificate (deceased spouse)
- School attendance certificate (child support and foster)
- Court order/extension order (foster child)
- Any other document (s) which may affect outcome of application

## General information

- All local offices has a one day turn-around, as well as most of the service points linked to these offices (manual process have a ten day turn-around)
- Norm of 15 working days set by SASSA: WC for processing of applications for social assistance (except disabilities)
- If a grant is refused or rejected the applicant will be informed in writing thereof in writing by registered post or hand delivered against a signature of the beneficiary
- In respect of grants for the disabled, the beneficiary will also be informed of the classification and when the medical coverage will expire. This is done to ensure that the beneficiary will have enough time to obtain an appointment at a medical facility for a medical assessment
- Three months prior to the suspension of a grant the beneficiary will be informed thereof in writing. This is not compulsory



## **Regulation 27(8)(a) stipulates the following:**

- *Where evidence exist that changes in the medical or financial circumstances of a permanently disabled person have or may have occurred, the review of the social grant may be done in accordance with subregulation 8(b).*

## **Reviews will be done as follows:**

- Medical review
- Administrative review
- Will be given notification of the intention to review
- Will be informed of documentation required
- Will be informed of the place and time when he or she must review
- Will be informed of outcome and right to make representations – reconsideration process and appeal process thereafter

## **Section 18(1) of the Social Assistance Act, stipulates the following:**

- *If an applicant or a beneficiary disagrees with a decision made by the Agency in respect of a matter regulated by this Act, that person or a person acting on his or her behalf may, within 90 days of gaining knowledge of that decision, lodge a written application to the Agency requesting the Agency to reconsider its decision in the prescribed manner*

## **At the disengagement phase of business process the person will be informed of the following:**

- Contents of notification of outcome
- Form to be completed if he or she want to request reconsideration
- Provide assistance with the completion of the reconsideration application form



## **Section 18(1A) of the Social Assistance Act, stipulates the following:**

- *If an applicant or a beneficiary disagrees with a reconsidered decision made by the Agency in respect of a matter contemplated in subsection (1), that person or a person acting on his or her behalf may, within 90 days of gaining knowledge of that decision, lodge a written appeal with the Minister against that decision, setting out the reasons why the Minister should vary or set aside that decision.*

In the notification of the outcome of the application for reconsideration the right to lodge an appeal is included and the full contact details are indicated

# Means Test

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- Apart from other criteria for eligibility, material means available to potential recipients are taken into consideration in determining whether they qualify for benefits, or what levels the benefits should be
- Sliding scale utilized – as the income increases above a certain level, the benefit level decreases until a point where no further benefits are paid
- Minimum amount for grants for the aged, disabled and war veteran's is R100.00. Other grants have fixed amounts
- Irrespective of whether a couple is married in or out of community of property, the means of a married person and his/her spouse shall be taken into account
- Means test consist of two elements, namely:
  - Assets
  - Income

# Means Test

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## Assets

- The market related value of any immovable property owned and not occupied by the applicant or his or her spouse
- Any assets (property, etc.) relinquished
- Investments
- Maximum value – R 930,600.00 single person & R1,861,200.00 married person

## Income derived from -

- Salaries and wages
- Income from trust
- Any pension or annuity
- Rent received from boarders
- Any profits or withdrawals
- Any other income – including interest and dividends from assets
- Maximum value – R64,680.00 per annum (R5,390.00 p.m.) for a single person and R129,360.00 per annum for a married person (R10,780.00 p.m.)
- Permissible deductions– Employee Tax, Pension/Provident, Medical Aid & UIF

# Grant Amounts

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- **Grant amounts**

**Minimum amount for grants for the aged, disabled and war veteran's is R100.00**

**Other grants fix amount**

<b>GRANT TYPE</b>	<b>GRANT AMOUNT</b>
<b>Older Persons Grant</b>	<b>R1 410.00</b>
<b>Older Persons Grant above 75</b>	<b>R1 410.00 + R20.00</b>
<b>Grant for Disabled</b>	<b>R1 410.00</b>
<b>Grant-in-Aid</b>	<b>R330.00</b>
<b>Child Support Grant</b>	<b>R330.00</b>
<b>Foster Child Grant</b>	<b>R860.00</b>
<b>Care-dependency Grant</b>	<b>R1 410.00</b>

# Registration

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## Ongoing Registration:

- Entails the registration of all new beneficiaries of social grants through capturing of their 10 finger prints, voice prints and a photographic image
- Beneficiary's and/or procurators residential, postal address and contact details are recorded

## Procurators

- Beneficiaries may elect a Procurator to receive a grant on his/her behalf
- Procurator forms must be completed and are obtainable at any SASSA Local Office.
- The completed forms must be approved by SASSA before procurator can be registered.
- Proof of appointment must be submitted to CPS upon registration.
- Once approved, the procurator and the beneficiary must be registered together
- The fingerprints of both the procurator and the beneficiary are captured
- A SASSA payment card is issued to the procurator which is linked to the beneficiary (Biometric)
- The procurator then collects the grant on behalf of the beneficiary

# Payment of Social Grants

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- Social grants are available from the 1<sup>st</sup> day to the 20th of every month and can be accessed at Cash Paypoints, participating merchants and any normal ATM
- Beneficiaries do not have to draw their money and stand in long queues on the 1<sup>st</sup> day of the month.

## Usage of Card

- At any cash pay point, free of charge
- At any participating payment vendor, namely, ShopRite, Spar, Pick n Pay, Boxer, (free of charge)
- At any ATM, where normal bank charges will apply



# Card Replacement

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- Beneficiaries are to pay a fee of R20.00 if the card is lost or damaged through negligence.
- Technical fault – no fee
- ***If replaced before the commencement of payment*** - the grant becomes available as soon as the beneficiary is issued with a new card and authorizes the transaction biometrically
- ***If replaced after grant has been loaded*** - if there were funds on the previous card, the funds will only be transferred to the new card after 72 hours

## Two types of manual payments namely:

- Manual payment; and
- Systems manual payment

# What if the ATM swallows the card

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- The beneficiary must go to the nearest SASSA office to do a card replacement.
- Card will be swallowed if beneficiary key in the incorrect PIN 4 times. (Cards are usually locked at the 3rd attempt and swallowed at the 4th attempt.)
- Beneficiaries must be warned of the fees they incur each time the incorrect PIN is presented-(reset the PIN at an enrolment station than to lose the card in an ATM).

## **Withdrawal of Grants at the ATM**

- Beneficiaries must not withdraw the full amount of grant at the ATM-reserve funds for bank
- Beneficiary must keep (in case they don't receive money) slip from the ATM as it contains important information required to lodge a dispute with the ATM's acquiring bank.
- Beneficiaries should contact the Call Centre (0800 600 160) to report the incident.

# Activities at Pay points

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- No micro lender or insurance brokers should be within 100m radius of a pay point. Infringements must be reported to the SAPS
- **SASSA help Desk** - always available at every pay point to assist with queries (must have required resources)
- **SOCPEN/BENNIN** - All queries must be handled at pay points. No beneficiary should leave the pay point without the query being resolved
- Queue management must be enforced.
- Queues must be separated in respect of payment issues, grant application issues
- Branding - SASSA / CPS staff must wear their branded gear including name tags at pay points to be easily identified.

## **Section 20(1) of the Social Assistance Act (Act 13 of 2004) stipulates the following:**

- *A grant may not be transferred, ceded, pledged or in any other way encumbered or disposed of unless the Minister on good grounds in writing consents thereto*

## **Section 133.(1) of the National Credit Act (Act 34 of 2005) stipulates the following:**

- *A Credit Provider must not-*
  - (a) *Make use of any document , number or instrument referred to in section 90(2)(l) when collecting on or enforcing a credit agreement*



## **Regulations 26 (A) of the Social Assistance Act (Act 13 of 2004) stipulates the following:**

- (1) The Agency may allow deductions for funeral insurance or scheme to be made directly from a social grant where the beneficiary of the social grant requests such deduction in writing from the Agency.*
- (2) Subject to the provisions of subregulation (1), the Agency may only allow deductions to be made directly from a social grant where the insurance company requiring such deduction or to whom the money resulting from the deduction is paid, is a financial services provider as defined in section 1 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) and authorized to act as a financial services provider in terms of section 7 of that Act.*
- (3) Notwithstanding the provisions of sub-regulation (1), the Agency may only authorize one deduction for a funeral insurance or for a funeral scheme not exceeding ten percent of the value of the beneficiary's social grant.*

# Deductions

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- Legislation requires:
- One deduction of not more 10% of the value of the grant for funeral insurance or scheme would be allowed

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# SASSA Local Operating Model



## Management Support

### Front - Office

#### Express/ Extended Line



4-Step Customer -Centric Process

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Medical Bookings/ Assessments

Customer Engagement

Customer Disengagement

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Enrolment

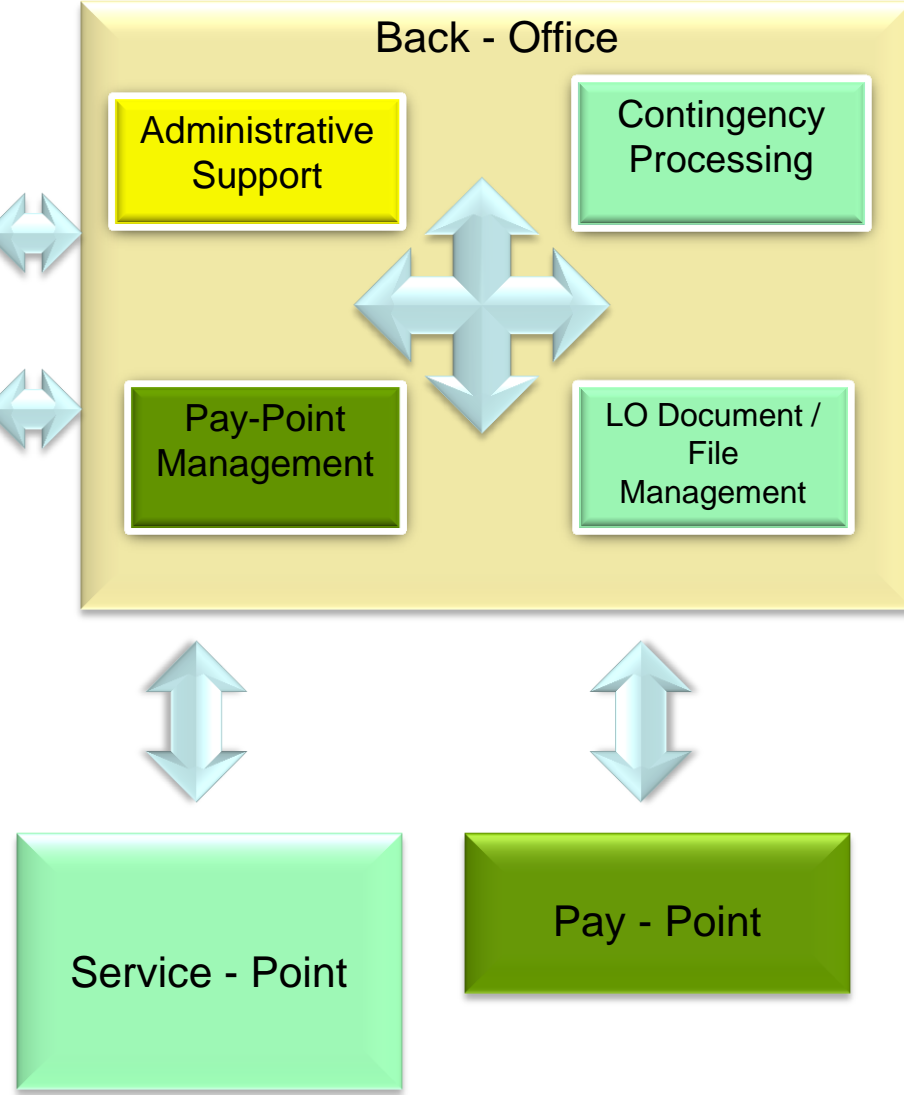
### Back - Office

Administrative Support

Contingency Processing

Pay-Point Management

LO Document / File Management



Service - Point

Pay - Point



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# Thank You

**Comments**

**Questions**

**Contributions**

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# THE RIGHT HOUSING

**Yellavarne Moodley**

- **Overview of the Law with respect to Housing, including the Constitution 's position on the Right to Housing and the Prevention of Illegal Eviction and Unlawful Occupation of Land Act , Act 19 or 1998**
- **Question and Answer Session**



# **Children's Rights**

A South African Perspective

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- Children are protected by the
  - Constitution of South Africa
  - United Nations (UN) Convention on the Rights of the Child that South Africa signed and agreed to on 16 June 1995.
  - African Charter on the Rights and Welfare of the Child
  - Children's Act 38 of 2005

# **Guiding laws on Children's Rights in South Africa**

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- **The best interests of a child are of paramount importance in every matter concerning the child.**
- Section 28 of the Constitution and Section 9 of the Children’s Act states that in all matters concerning the care, protection and well-being of a child, the best interest standard must be applied.
- In addition Section 10 of the Children’s Act which deals with Child participation states that *“Every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration.”* Therefore the opinion of the child must then be given due consideration in the decision-making process.

# Guiding principle for Children

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- The Constitution recognises that children need special protection. This recognition can be found in Section 28 of the Constitution sets out special rights just for children:
  - Every child has the right to family care or parental care.
  - If a child is taken away from his or her family, the child has a right to have other appropriate care.
  - Every child has a right to basic health care services
  - Every child has a right to basic social services.
  - Every child has a right to be protected from abuse or bad treatment that ignores his or her needs.
  - Every child has a right to be protected from child labour.

# Constitutional Rights

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- Section 28(1)(a) guarantees every child the right to a name and nationality and the Births and Deaths Registration Act requires every birth of any child to be registered by the DHA within 30 days of the birth of the child
- No fees are charged for registering the birth of a child
- There are separate regulations for registering birth after 30 days – reasons have to be provided

# **Right to nationality and a name**

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- **Registering the birth of a child born out of wedlock**
- Children born out of wedlock are registered under the surname of the mother. They may also be registered under the surname of their biological father provided that the father acknowledges paternity and both the father and the mother consent to the registration of the child under the father's surname in the presence of a Home Affairs official.

## **Children born out of marriage**

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- DHA generally refuses to register children born to at least a mother or both and mother and father without papers
- This is unlawful because the right to have birth and a name is one conferred to the child and not the parent, it is also not one conditional on the parent's illegal status
- It is also prejudicial on the child who would have to be without a birth certificate, which at the least can allow them to attend school
- It may have to be challenged in Court

# **Children born to parents without documentation**

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- Section 29(1)(a) of the Constitution reads as follows: 29. Education.—(1) ***Everyone*** has the right- (a) to a basic education, including adult basic education;
- Section 3(1) of the South African Schools Act makes primary and lower secondary schooling compulsory for all children between the ages of 7 and 15 years (or until the completion of Grade 9, whichever occurs first).
- It obliges every parent/guardian to ensure that every learner for whom he or she is responsible attends school every day during the compulsory phase.
- In addition, the Policy on Learner Attendance (2010) obliges schools to monitor daily attendance of learners and take supportive action where they are unlawfully absent.

# Right to Education

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- For Public Schools, there are generally two types of schools in terms of school fees:
  - “no fee” schools per declaration by the Minister of Education based on the location of the school – poor community – no school fees can be charged in such schools including activity or extra mural fees.
  - All other State schools are “fee charging” schools.
- Private Schools – private schools provide scholarships for needy children which each child has to apply for and qualify based on the school's criteria – not an automatic right

# School Fees

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- If you are struggling to make school payments, you can apply for school fee exemptions which includes refugees and asylum seekers parents
- Different types of exemptions:
  - Automatic Exemption
  - Full Exemption
  - Partial Exemption
  - Conditional Exemption

# Fee Exemptions

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- The following children qualify automatically for fee exemption:
  - Orphans in an orphanage
  - In child head households
  - Learners with foster parents
  - Learners placed in youth care centres or in the care of a family member
  - Learners whose parents receive a social grant in their name. For example, a Child Support Grant.

# Automatic Exemptions

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- **Full exemption** - If the school fees are more than 10% of the combined annual gross income of both parents, the child is fully exempt from paying school fees.
- **Partial exemption**: If the school fees are between 3.5% and 10% of the combined annual gross income of both parents, the child will qualify for partial exemptions

# Full and Partial Exemption

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- **Conditional exemption:**
  - This is an exemption granted to a parent who qualifies for partial exemption but, owing to personal circumstances beyond his/her control, cannot pay the reduced amount.
  - It also applies to parents who don't qualify for exemptions but supply information that proves an inability to pay school fees owing to personal circumstances beyond their control.
- **No Exemption:** Where the combined annual gross income of both parents is more than 30 times the annual school fees per learner, the child doesn't qualify for any exemptions.

# Conditional and No Exemptions

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- When you apply for an exemption from school fees, the SGB will apply the following formula:
- To calculate the formula, fill in the following values:

$$E = 100 \left[ \frac{F + A}{C} \right]$$

- **E** = School fees as a proportion of the family income.
- **F** = Annual school fees, for one child. (If a parent has more than one child at the same school and the fees are not the same for all of them, the highest fees must be used in the calculation).
- **A** = Additional monetary contributions demanded by the school.
- **C** = Combined gross income of parents.
- **100** = The number by which the answer arrived at in brackets is multiplied so as to convert it into a %.

# Method of Calculation

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- Forms should be available at you're the School – complete the forms and send them to the School also write a letter to the School Governing Body (SGB) asking for a school fee exemption.)
- Accompanying documents will include a payslip or a letter from your employer, if self-employed or unemployed, then you must provide an affidavit explaining how you support the child.
- The SGB has 30 days to accept or reject an application.
- If you are unhappy with the decision, you have 30 days to appeal in writing to the Head of the Department of Education in your province. You can ask a teacher or principal to help you with the exemption process.

# **How to apply for a fee exemption**

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- If a parent/guardian is in arrears for 1 or 2 months, the SGB must investigate whether a parent is entitled to an exemption and they can only take legal action against a parent/s or guardian(s) once they have proved that parent/s do not qualify for an exemption.
- Also, the school may not begin legal proceedings while the parent/s is working with any of the institutions set up under the National Credit Act.
- After 3 months of arrears, the SGB must first send a Letter of Demand warning the parent, and providing a date by which they must respond. This is required to get an order from the Court.
- If the parent does not respond, they must serve their summons in a formal way, calling them to the Magistrate's Court.
- The parent will be able to put his/her case before the Magistrate's Court.
- If the summons is ignored and the parent does not go to court, the Magistrate can give a default judgment in the parent's absence.
- If the parent does not comply with the Magistrate's orders, the Sheriff of the Court can attach possessions and sell them to pay off the debt.
- It is illegal to expel the learner from school or withhold a report for failure to pay fees

# Failure to pay school fees

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**RIGHT TO HEALTH CARE FOR  
CHILDREN**

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- All children have a right to basic health care services.
- Section 13 of the Children's Act states that every child has the right to
  - (a) have access to information on health promotion and the prevention and treatment of ill-health and disease, sexuality and reproduction;
  - (b) have access to information regarding his or her health status;
  - (c) have access to information regarding the causes and treatment of his or her confidentiality regarding his or her health status and
  - (d) the health status of a parent, care-giver or family member, except when maintaining such confidentiality is not in the best interests of the child.
- Information provided to children in terms of this law must be relevant and must be in a format accessible to children, giving due consideration to the needs of disabled children.

# General Rights in Health

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- Consent is the manifestation of a person's wishes and must be valid for it to be legally acceptable.
- Section 129 of the Children's Act provides the legal framework for this consent (with the exception of operations that fall within the Choice of Termination of Pregnancy Act discussed below)

# **Children giving Consent for Health Services**

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Consent to medical treatment: A child may consent to his or her own medical treatment or to the medical treatment of his or her child if:

- the child is over the age of 12 years; and
- the child is of sufficient maturity and has the mental capacity to understand the benefits, risks, social and other implications of the treatment.

Consent to surgical operations: A child may consent to the performance of a surgical operation on him or her, or on his or her child if:

- the child is over the age of 12 years; and
- the child is of sufficient maturity and has the mental capacity to understand the benefits, risks, social and other implications of the surgical operation; and
- the child is duly assisted by his or her parent or guardian.”
- NOTE: the deciding factor is not only the child’s age, other factors to consider include the maturity and capacity of the child to understand the benefits, risks, social and other implications of the treatment or surgical operation

# Consent: Children Over 12

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- Consent to medical treatment: For children under 12, or children over 12 but lack sufficient maturity to understand the risks and benefits of the treatment, then parents, guardian or caregiver need to consent on the child's behalf.
- Consent to surgical operations: For children under 12, or children over 12 but without sufficient maturity to understand the risks and benefits of the surgery, the parents or guardian need to consent on the child's behalf.
- Parents include biological mothers (if under 18 then the mother's guardian is the guardian), biological parents with full parental responsibility, caregivers in some instances when parents or guardians cannot give consent (section 129(3))
- The Hospital Superintendent or the Minister can in some instances give consent when it is unreasonably refused, cannot be easily obtained or if the parent cannot give consent or is deceased
- Section 129(9) also in some instances authorises a Court to make a decision about the medical treatment or surgery

# Consent: Chn under 12

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- With regards to HIV/AIDS testing, Section 130 of the Children's Act states that:
  - If the child is over 12 years then the child can give consent, without his or her parent's knowledge.
  - If the child is under 12 years and sufficiently mature enough to understand the benefits, risks and social implications of the test, then the child can consent him or herself.
  - If the child is under 12 and is not mature enough then the parent or caregiver must give consent on the child's behalf.

# **Consent in HIV/AIDS Testing**

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- If the child does not have parents or a guardian, the parents or guardian are not available or they cannot be found in time, then consent to general medical treatment or operation (which is not risky to the child's life or health) can be given by one of these people:
  - A person with parental power over the child
  - A person who has custody of the child (eg a foster parent or the head of a children's home)
  - The Minister of Social Development.
  - The provincial head of social development;
  - A designated child protection organisation arranging the placement of the child (e.g. Child Welfare);
  - The superintendent or person in charge of a hospital, if the child has no parent or caregiver and there is no designated child protection organisation arranging the placement of the child;
  - The Children's Court, if consent is unreasonably withheld by the above, including the child;

# **Consent in HIV/AIDS Testing**

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- Section 133 provides that information on a child's HIV status must be kept confidential.
- Breaching confidentiality without consent is an offence with a penalty of a fine or imprisonment
- A child under 12 cannot consent to treatment, but can refuse to disclose the results to the parent or guardian. In this case, the health professional should encourage the child to disclose to the parent, guardian or caregiver (if unduly refused then care provider can approach court of the superintendent can give consent for any urgent treatment that cannot wait until consent is given)

## **Confidentiality in HIV/AIDS Testing**

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- A children's home or place of safety does not have a right to have information on a child's HIV status.
- Children with HIV/AIDS often face discrimination and some children are even excluded from children's homes because of their HIV status.
- This is why HIV/AIDS activists often argue that a children's home or place of safety should not be told of a child's HIV status.
- Universal precautions should be followed by all staff at places of safety and children's homes. This is why there is no need to know the HIV status of a child, in order to protect staff and other children.
- But sometimes it may be in the best interests of the child if the caregiver knows a child's HIV status. With children who are 14 or older, these children can decide who to tell about their HIV status.

**Should a children's home or place of safety have information on a child's HIV status?**

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- With children under 14, it is recommended that a children's home or place of safety can be informed of a child's HIV status if:
  - The child's HIV status is already known because of previous HIV testing, and
  - It is in the best interests of the child, and
  - The children's home or place of safety does not discriminate on the basis of HIV, and
  - The children's home or place of safety has policies on confidentiality.
- A children's home, place of safety, or any other institution (including schools and pre-schools) may not refuse to admit a child simply because of the child's HIV status. This is unfair discrimination.
- The law does not say that a child's HIV status must be disclosed to a school. It is recommend that parents or care-givers carefully think about what is in the child's best interests before deciding whether to disclose this information.

## **Guidelines in Cases of Children Infected with HIV/AIDS**

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# **RIGHT TO REPRODUCTIVE HEALTH OF CHILDREN**

The Constitution says that all children have a right to health. The right to health includes a right to reproductive health.

Reproductive health is the health of your body's reproductive system – your body parts which are used for having sex and giving birth to babies.

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- Abortion may only take place with the informed consent of the pregnant person
- No consent other than that of the pregnant woman shall be required for the termination of a pregnancy
- In the case of a pregnant minor, a medical practitioner or a registered midwife shall advise such minor to consult with her parents, guardian, family members or friends before the pregnancy is terminated: Provided that the termination of the pregnancy shall not be denied because such minor chooses not to consult them

# CONSENT

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- Any person who is not a medical practitioner or a registered midwife who has completed the prescribed training course and who performs the termination of a pregnancy as explained above or who is a medical practitioner and who performs the termination; or prevents the lawful termination of a pregnancy or obstructs access to a facility for the termination of a pregnancy, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 10 years.

# Offences and penalties

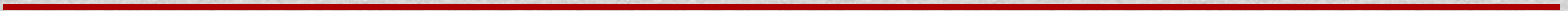
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- Section 134 states that no person may refuse to sell condoms to a child over the age of 12 years; or provide a child over the age of 12 years with condoms on request where condoms are provided or distributed free of charge;
- Contraceptives other than condoms may be provided to a child on request by the request of the child and without the consent of the parent or care-giver of the child if the child is at least 12 years of age; proper medical advice is given to the child; and a medical examination is carried out on the child to determine whether there are any medical reasons why a specific contraceptive should not be provided to the child.
- A child who obtains condoms, contraceptives or contraceptive advice is entitled to confidentiality in this respect except in cases where health professionals are obliged to report cases of physical or sexual abuse, or deliberate neglect of a child to the Department of Social Development, a designated child protection organisation or the police

# Access to Contraception

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- THANK YOU





# THE RIGHT TO SAFETY AND SECURITY


By James Chapman Adapted form 2014 Adv. R. Nyman

# INTRODUCTION

- This presentation is divided into two parts:
  - [1] The right of refugees to safety and security; and
  - [2] The protection of this right.
- The right to safety and security and its protection are laid down in in “the common law” and in legislation and court cases. Our court cases tell us how to interpret and apply the common law and the legislation.



**PART ONE – THE RIGHT TO**  
**SAFETY AND SECURITY**

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- \* We will first look at the Constitution of South Africa, which is the highest law of our land, and then the following Acts:
  - \* Refugees Act No 130 of 1998; and
  - \* Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

# THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA

- Chapter 1, sections 1 to 6 of the Constitution set out its founding provisions.
- Section 1 spells out the following values of the Republic of South Africa:

“The Republic of South Africa is one, sovereign, democratic state founded on the following values:

- (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.
- (b) Non-racialism and non-sexism.
- (c) Supremacy of the constitution and the rule of law.
- (d) Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.”

# THE CONSTITUTION

- Section 2 states that “the Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled”.
- Chapter 2, sections 7 to 39 of the Constitution contain the Bill of Rights: also referred to as “fundamental rights”.
- Sub-section 9(1) affords everyone the right to equal protection and benefit of the law.
- Sub-section 9(3) prohibits unfair discrimination by the state on the grounds of amongst other things, ethnic or social origin.

# THE CONSTITUTION

- Section 12 makes provision for the right to freedom and security of the person:

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

- (a) not to be deprived of freedom arbitrarily or without just cause;
- (b) not to be detained without trial;
- (c) to be free from all forms of violence from either public or private sources;
- (d) not to be tortured in any way; and
- (e) not to be treated or punished in a cruel, inhuman or degrading way.

# THE CONSTITUTION

\* Section 12(2) goes on to provide:

“Everyone has the right to bodily and psychological integrity, which includes the right-

- (a) to make decisions concerning reproduction;
- (b) to security in and control over their body; and
- (c) not to be subjected to medical or scientific experiments without their informed consent.”



# THE REFUGEES ACT


- \* Sub-section 27(b) entitles refugees the right to enjoy full legal protection including the rights set out in Chapter 2 of the Constitution. Our courts have held that not only refugees, but all persons who are physically within the country, including asylum seekers enjoy the protection of our law.

# THE PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT

- \* Section 1 (a) prohibits unfair discrimination on the grounds of ethnicity and social origin.



**PART TWO - THE PROTECTION**  
**AND ENFORCEMENT OF THE**  
**RIGHT TO SAFETY AND SECURITY**

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- \* When we face a threat to the violation of our right to safety or security or the actual violation of this right, we can either act in self defence, if this is possible, or we can ask the police for assistance. In certain circumstances, where for example the threat is foreseeable, we can also turn to our Courts for urgent relief. Where we have suffered injury or damages, we can also ask our Courts for compensation.



**THE SOUTH AFRICAN POLICE  
SERVICE**

# THE CONSTITUTION

- \* Section 205(3) of the Constitution explains the objects of the police service:

“The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.”

# THE SOUTH AFRICAN POLICE SERVICE ACT

- The preamble of the Police Act records that its object is to:
  - ensure the safety and security of all persons and property in the national territory;
  - uphold and safeguard the fundamental rights of every person as guaranteed by Chapter 3 of the Constitution;
  - ensure co-operation between the Service and the communities it serves in the combating of crime;
  - reflect respect for victims of crime and an understanding of their needs; and ensure effective civilian supervision over the Service.

# THE SOUTH AFRICAN POLICE SERVICE ACT

- Section 13(1) provides that police officers shall exercise the powers, duties and functions as are by law conferred on or assigned to a police official, subject to the Constitution and with due regard to the fundamental rights of every person.
- Sub-section 13(1) states that police officers shall exercise their powers, duties and functions as are by law conferred on or assigned to them, subject to the Constitution and with due regard to the fundamental rights of every person.
- Section 13(3)(a) stipulates that where a member is obliged to perform an official duty, he or she shall, with due regard to his or her powers, duties and functions, perform such duty in a manner that is reasonable in the circumstances.



- The police carry a statutory obligation to protect us if there is a violation of threatened violation to our right to safety and security. This obligation is called “a duty of care”.
- Where the police fails to come to our assistance or where the police itself violates our right to safety and security have can:
  - Sue the police in Court;
  - Lodge a complaint with the Independent Complaints Directorate; and/or
  - Lodge a complaint with the South African Human Rights Commission.

# *Carmichele v Minister of Safety and Security and Another (Centre For Applied Legal Studies Intervening)* 2001 (4) SA 938 (CC)

- The Court held that to determine the circumstances when there was a legal duty on the police officers to act, one has to:
  - Weigh up and strike a balance between the interests of parties and the conflicting interests of the community.
  - This exercise of “weighing up” must be carried out in accordance with the 'spirit, purport and objects of the Bill of Rights' and “the context of a constitutional State founded on dignity, equality and freedom and in which government has positive duties to promote and uphold such values”.
- The court noted further that:
  - One has to take into account that the Bill of Rights entrenches the rights to life, human dignity and freedom and security of the person.
  - The Bill of Rights binds the State and all of its organs.

*Minister of Safety and Security and Another v Carmichele* 2004  
(3) SA 305 (SCA)

- \* The Supreme Court of Appeal held that police officers are accountable to the public to carry out their statutory and Constitutional duties and if they fail to carry out such duties, they will be liable to pay damages to a party in the form of monetary compensation.

# Independent Police Investigative Directorate (IPID)

- Sections 50 to 54 of the Police Act make provision for the establishment, composition and additional functions of the formerly Independent Complaints Directorate (“ICD”) and Independent Police Investigative Directorate (IPID). IPID structures exist at a provincial and national level. Section 50(2) lays down the principle of independence; namely that the IPID shall function independently from the Police Service. <http://www.icd.gov.za/> - lodge a complaint
- Section 206 of the Constitution sets out the functions of the IPID at a provincial level in the following manner:
  - “(3) Each province is entitled-
  - (a) to monitor police conduct;
  - (b) to oversee the effectiveness and efficiency of the police service, including receiving reports on the police service;
  - (c) to promote good relations between the police and the community;
  - (d) to assess the effectiveness of visible policing; and
  - (e) to liaise with the Cabinet member responsible for policing with respect to crime and policing in the province.”

# Independent Police Investigative Directorate (IPID)

- Section 206 of the Constitution goes on to provide that:

“(4) A provincial executive is responsible for policing functions-

- (a) vested in it by this Chapter;
- (b) assigned to it in terms of national legislation; and
- (c) allocated to it in the national policing policy.

(5) In order to perform the functions set out in subsection (3), a province-

- (a) may investigate, or appoint a commission of inquiry into, any complaints of police inefficiency or a breakdown in relations between the police and any community; and
- (b) must make recommendations to the Cabinet member responsible for policing.

(6) On receipt of a complaint lodged by a provincial executive, an independent police complaints body established by national legislation must investigate any alleged misconduct of, or offence committed by, a member of the police service in the province.”

# THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

- \* If the police, or any other private or public body or person violates or threaten to violate our right to safety and security, we can lodge a complaint with the South African Human Rights Commission.



**GENERAL - APPROACH BY OUR  
COURTS TO REFUGEES**

*Union of Refugee Women and Others v Director:  
Private Security Industry Regulatory Authority and  
Others 2007 (4) SA 395 (CC)*

- \* The Constitutional Court held that refugees constitute a vulnerable group in our society because:

“They have been forced to flee their homes as a result of persecution, human rights violations and conflict and very often they, or those close to them, have been victims of violence on the basis of very personal attributes such as ethnicity or religion.”



## *Lawyers for Human Rights and Another v Minister of Home Affairs and Another 2004 (4) SA 125 (CC)*

- The Constitutional Court held that the Bill of Rights afforded protection not only to refugees but also asylum seekers who are present at our ports of entry as set out in the following paragraphs:

“The government contended that our Bill of Rights does not accord protection to foreign nationals at ports of entry who have not yet been allowed formally to enter the country. It was accordingly suggested that the provisions in issue cannot be found to be inconsistent with the Constitution. The government relied on s 7(1) of the Constitution which enshrines the rights of all the people 'in our country'. We were urged to find that people at ports of entry who have not yet been allowed formally to enter South Africa, are not 'in our country' within the meaning of the subsection.”

## *Lawyers for Human Rights and Another v Minister of Home Affairs and Another 2004 (4) SA 125 (CC)*

- “It is neither necessary nor desirable to answer the general question as to whether the people to whom s 34 of the Act applies are beneficiaries of all the rights in the Constitution. It is apparent from this judgment that the rights contained in s 12 and s 35(2) of the Constitution are implicated. The only relevant question in this case therefore is whether these rights are applicable to foreign nationals who are physically in our country but who have not been granted permission to enter and have therefore not entered the country formally. These rights are integral to the values of human dignity, equality and freedom that are fundamental to our constitutional order. The denial of these rights to human beings who are physically inside the country at sea- or airports merely because they have not entered South Africa formally would constitute a negation of the values underlying our Constitution. It could hardly be suggested that persons who are being unlawfully detained on a ship in South African waters cannot turn to South African courts for protection, or that a person who commits murder on board a ship in South African waters is not liable to prosecution in a South African court.”

## *Lawyers for Human Rights and Another v Minister of Home Affairs and Another 2004 (4) SA 125 (CC)*

- “Once it is accepted, as it must be, that persons within our territorial boundaries have the protection of our courts, there is no reason why 'everyone' in ss 12(2) and 35(2) should not be given its ordinary meaning. When the Constitution intends to confine rights to citizens it says so. All people in this category are beneficiaries of s 12 and s 35(2). It is not necessary in this case to answer the question whether people who seek to enter South Africa by road at border posts are entitled to the rights under our Constitution if they are not allowed to enter the country.”

# *Abdi and Another v Minister Of Home Affairs And Others 2011 (3) SA 37 (SCA)*

\* The Supreme Court held that:

“Refugees and asylum seekers held in an 'inadmissible facility' at a port of entry into South Africa have defined rights under South African law that are justiciable by South African courts, and refusing such persons entry into South Africa in circumstances in which they would as a result be exposed to the risk of persecution or physical violence in their home countries, is unconstitutional.”

# *Abdi and Another v Minister Of Home Affairs And Others* 2011 (3) SA 37 (SCA)

- The appellants, a recognised refugees and a registered asylum seeker in South Africa, had, fearing xenophobia, left South Africa for Namibia.
- Once there, the Namibian authorities decided that they were illegal aliens and deported them to Somalia via South Africa.
- Upon their arrival in South Africa they were held at the airport's 'inadmissible facility' while awaiting deportation.
- While being so held they launched an urgent High Court application for an interdict prohibiting the respondents from deportation, and also to ensure that the appellants were readmission to South Africa.
- The application was dismissed by the High Court, but the appellants were allowed to remain in the facility, pending the instant appeal to the SCA.

# *Abdi and Another v Minister Of Home Affairs And Others* 2011 (3) SA 37 (SCA)

- Before the Supreme Court of Appeal the respondents raised the following defences:
  - They were not responsible for the appellants because they were being deported by another country.
  - The inadmissible facility was not part of South Africa and South African authorities and courts lacked jurisdiction over the appellants while they were being detained there.
  - South African courts had no jurisdiction to consider or interfere with the execution of a deportation order issued by another country.
  - The appellants, as deportees of another country (Namibia), had no right to invoke the protection of the Refugees Act.

# *Abdi and Another v Minister Of Home Affairs And Others 2011 (3) SA 37 (SCA)*

- The Court held that:
  - The argument that persons who are held in an inadmissible facility at a port of entry were beyond the courts' jurisdiction, was incompatible with legal precedent, domestic and international law.
  - The appellants' respective status was clearly established by documentation in the hands of the respondents, and that the Refugees Act clearly applied to them.
  - Refusing refugees entry into South Africa, and thereby exposing them to the risk of persecution or physical violence in their home country, was in conflict with fundamental constitutional values.
  - The suggestion that the Namibian deportation order precluded South African authorities and courts from dealing with refugees present within its own territory would constitute an unwarranted intrusion into the affairs of a sovereign State.
- The Appeal was therefore upheld and the respondents were directed to release the appellants and to provide them document to lawfully remain in the Republic.

# CRIMINAL JUSTICE SYTEM

- \* Question and Answer Session addressing any and all questions raised by Participants in relation to Criminal Law
- \* Discussion of Bail Process
- \* Discussion on Arrest and Detention
- \* Discussion on Identification and Deportation
- \* Discussion on reporting crime



# LESSONS LEARNED (REFUGEES LED THE SESSION)

Facilitated Discussion

Information sharing and Advice from Refugee Leaders