Celebrating 20 years of the Constitution

Know your constitutional rights - free pull-out inside

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the DOJ & CD
Department: Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

#LETSMAKEITREAL
You can access the South African Constitution in all official languages at your nearest public library and Thusong Service Centres.
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### Facts about our Constitution

<table>
<thead>
<tr>
<th>Fact</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>The Constitution was signed into law by former President Nelson Mandela on 10 December 1996 in Sharpeville.</td>
</tr>
<tr>
<td>2</td>
<td>Over two million people participated in the making of the South African Constitution.</td>
</tr>
<tr>
<td>3</td>
<td>The Constitution is the supreme law of our country - that is why it is essential that you familiarise yourself with its contents.</td>
</tr>
<tr>
<td>4</td>
<td>The Preamble of the Constitution is the responsibility every South African citizen takes on. It is our agreement with the State and with our fellow citizens.</td>
</tr>
<tr>
<td>5</td>
<td>Anything - law or conduct - that is inconsistent with our Constitution is considered and declared invalid. That is one of the differences between democratic South Africa and the “old order”.</td>
</tr>
<tr>
<td>6</td>
<td>Our Constitution contains 14 chapters and seven schedules, each tackling one specific topic.</td>
</tr>
<tr>
<td>7</td>
<td>The Constitution contains the Bill of Rights in Chapter 2, this outlines all our rights and responsibilities as South African citizens.</td>
</tr>
<tr>
<td>8</td>
<td>Chapter 9 of our Constitution details the seven institutions supporting Constitutional Democracy. They are the Public Protector; South African Human Rights Commission; Commission for the Promotion and Protection of Cultural, Religious and Linguistic Communities; Commission for Gender Equality; the Auditor-General; the Independent Electoral Commission; and the Independent Broadcasting Authority.</td>
</tr>
<tr>
<td>9</td>
<td>The Constitution is referred to as a “living document” - this is because as the country changes and developments occur, the Constitution must be able to adapt.</td>
</tr>
<tr>
<td>10</td>
<td>The Constitutional Court of South Africa is the highest court in the land. It was established in 1994 and is the key institution in our constitutional democracy. Our current Chief Justice is Mogoeng Mogoeng.</td>
</tr>
<tr>
<td>11</td>
<td>The Department of Justice and Constitutional Development has made the Constitution available in all the official languages, as well as in Braille.</td>
</tr>
</tbody>
</table>

Source: LeadSA
As we commemorate Human Rights Month, the month which marks our commitment to ensuring that our basic rights are protected and furthered, it is a good opportunity for us to join hands in celebrating the 20th anniversary of the Constitution of our country. The month of March is very significant in the history of South Africa where we are reminded as a nation about the sacrifices that accompanied the struggle for the attainment of democracy.

Human Rights Day is officially commemorated annually on 21 March. On March 21, 1960 events were planned in many parts of the country for people to protest against the pass laws.

In Sharpeville, thousands of people gathered at the police station demanding to be arrested. They were met by 300 police officers who, after a scuffle opened fire, killing 69 people and 180 more were injured. It was also on this day in 1985 that 12 people were gunned down by the apartheid police while on a march to KwaNobuhle to commemorate Sharpeville Day. Many more were shot at, but survived the massacre. No doubt, with a past riddled by so much infringement on basic rights, the Constitution of our country stands strong as a concrete reminder that we today have a democratically elected government in which all people enjoy equal rights.

Our Constitution has been hailed as one of the most progressive in the world. The Bill of Rights (Chapter 2 of the Constitution) is the cornerstone of South Africa’s democracy. It enshrines the rights of all people in South Africa and affirms the democratic values of human dignity, equality and freedom. The Constitution remains an important framework that contains our aspiration for a non-sexist, non-racial, democratic and prosperous South Africa.

Now is the time for all of us to know our Constitution, to know the rights that we have as well as the responsibilities that go with having these rights. This will allow us to strengthen our democracy and build a just and humane society.

During this month, we also heed the national call to say ‘no’ to racism. Recent incidents in our country that have taken on racist overtones, show that we still have much to do to overcome the scourge of racism. In this regard, I also urge each and every South African, in celebrating their human rights, to recognise and make inputs to the Draft National Action Plan. The NAP envisions uniting all South Africans in building a non-racial, tolerant society that recognises its plurality and diversity based on the values of equality and human dignity through the promotion of anti-racism education, the promotion of constitutional values and the advancement of human rights, through dialogue and action.

Together, let us continue to embrace and promote constitutional rights, values and use them to move our country forward.
The birth of the South African Constitution

It was a grey and drizzly Friday in Dublin. The year was 1987. The place was Kader Asmal’s kitchen table. At the table sat Kader Asmal and Albie Sachs. Between them a blank sheet of paper. The task at hand was to write the first draft of our Constitution’s Bill of Rights. This would evolve into the draft that formed the basis of the constitutional negotiations and later the Constitution.

As Justice Sachs told the Irish Independent, they deliberately sat down “with a blank sheet of paper – no Universal Declaration, no international conventions, no Constitution from any country — on the basis that a Bill of Rights should speak out from the soul, the fundamental rights that belong to every human being and shouldn’t be a list of items gleaned from an encyclopaedia or legal dictionary or textbook.”

Our Bill of Rights does indeed speak from the soul. It speaks from the soul of a divided nation, a nation which still today has to deal with the legacy of centuries of human rights abuses. It speaks of hope for a better future.

As we celebrate the 20th anniversary of the 1996 Constitution this year, it is a time to reflect on our country’s journey from apartheid to a constitutional democracy, on how far we have come to build a human rights-based culture, and what still needs to be done.

Human Rights Month is commemorated in March to remind us about the sacrifices made in the struggle for democracy in South Africa.

The 1960s were characterised by systematic defiance and protest against apartheid and racism across the country. On 21 March 1960, the community of Sharpeville and Langa townships, like their fellow compatriots across the country, embarked on a protest march against pass laws. The apartheid police shot and killed 69 of the protesters at Sharpeville, many of them shot while fleeing.

Today the Constitution is the ultimate protector of our human rights. We commemorate Human Rights Day to reinforce our commitment to the Bill of Rights enshrined in our Constitution. Given the recent rise of racial incidents in our country, we know that there is still much to be done.

In 2014, the South African Human Rights Commission (SAHRC) confirmed that it had received more than 500 reports of racism – of which a large part were on social media. In 2015, the SAHRC said that hate speech cases on social media increased to 22% of matters investigated, compared to 3% in the same period the previous year.

The rise and growing popularity of social media is a two-edged sword – on the one hand, bringing us closer to world events, giving us live feeds on happenings and allowing us to participate in debates in the public arena. On the other hand, it can become a breeding ground for racism, prejudice and intolerance. Under the convenient guise of anonymity, cyberspace allows
people to say things to one another – things that they would never dream of saying to someone in person.

The overall majority of our people are not racist. The challenge, however, lies in not becoming complicit through silence.

It is time to speak up and say #RacismNotInMyName #RacismNotInMyCountry.

One is inevitably reminded of the quote by Martin Niemöller, the German pastor who emerged as an outspoken critic of Hitler and the Nazis and spent seven years in the Sachsenhausen and Dachau concentration camps. He talks about complicit guilt and writes:

First they came for the Socialists, and I did not speak out — Because I was not a Socialist.
Then they came for the Trade Unionists, and I did not speak out — Because I was not a Trade Unionist.
Then they came for the Jews, and I did not speak out — Because I was not a Jew.
Then they came for me — and there was no one left to speak for me.

Niemöller realises that he himself was complicit. He was a decorated German soldier in World War I and even initially backed Hitler’s run for power. But by 1933, Niemöller started to realize what was happening under Hitler’s rule and knew that it was wrong. Niemöller then formed a group opposed to the Nazis and became a fierce opponent of Hitler.

Like Niemöller, many white people in our country today are standing up and saying that, although they may have supported the apartheid system at the time, they now realize that it was wrong. They realize that apartheid was a crime against humanity.

The challenge for all of us, as South Africans, is to fight racism, racial prejudice and intolerance. The Institute for Justice and Reconciliation’s 2015 Reconciliation Barometer, released in December last year, shows that the majority of respondents (61.4%) feel that race relations since 1994 have either stayed the same or deteriorated. Only 35.6% of the sample indicated that they experience no racism in their daily lives.

Moreover, trust between the country’s historically defined racial groups remains low – 67.3% of all respondents noted that they have little to no trust in their fellow citizens of other racial groups. Only about one in three people did not believe that it was difficult to confront someone they knew when he or she spoke or behaved in a racist manner.

As we celebrate Human Rights Month, let us be mindful of the human rights of others. We must never be complicit.

Whether we are at the work place, within our communities, in our schools, or with our partners and children, we all need to demonstrate the kind of responsibility that we would like to see in our country’s future.

Let us take a stand.

Let us say #RacismNotInMyName #RacismNotInMyCountry.
HARASSMENT
is when a person engages in any unreasonable conduct which causes mental, psychological, physical or economic harm to another person.

South Africa has tightened its belt in dealing with cases of harassment, with officials urging victims to come forward and report such incidences. More often than not, victims of harassment are unaware of the crime that has been perpetrated against them, while some are scared and even embarrassed to come forward to place a formal complaint.

Prior to 2011 the civil and criminal law framework did not provide adequate recourse to victims of harassment who are not in a domestic relationship. This meant that victims of harassment only in a domestic partnership could come forward. The Domestic Violence Act, 1998, only provides for a remedy against harassment and stalking in a domestic relationship. In order to address the problem of harassment, the Protection from Harassment Act, 2011 (Act 17 of 2011) was introduced to protect everyone against harassment.

The Act provides assistance to victims, in the form of a protection order which prohibits a person from harassing another person. “If the harasser breaches a protection order he or she commits an offence which is punishable with a fine or a period of imprisonment,” explains Sarel Robbertse, a State Law Advisor at the Department of Justice and Constitutional Development (DoJ&CD).
According to Robbertse, there are various types of harassment. These include, unreasonably following a person; watching or pursuing a complainant or a related person; and engaging in verbal, electronic or any other communication aimed at the complainant or a related person.

A complainant is a person who has been the victim of harassment and is bringing forward a claim. The Act also makes provision for sexual harassment, which relates to “any unwelcomed sexual attention from a person who reasonably knows that such attention is unwelcomed”. Such sexual attention includes unwelcomed behaviour, suggestions, messages or remarks of a sexual nature that have the effect of offending, intimidating or humiliating a complainant or a person who has a close relationship with the complainant.

A former victim of sexual harassment, Claire Browns from Upington, received help through filing of a protection order. Browns alleged that she was being sexually harassed by a male colleague. “My colleague made remarks towards me of a sexual nature that made me feel uncomfortable,” she highlighted. She laid a formal complaint of harassment and filed a protection order.

The Protection from Harassment Act also provides for a mechanism to assist in determining the identity and address of a harasser who uses electronic communications to harass victims. The court may direct an electronic communications service provider to furnish the court with the name, surname, identity number and address of the cyber harasser; and any other available information that will validate the harassment of the complainant.

Robbertse also explained that the Act also states that a child under the age of 18, or a person on behalf of a child, may apply for a protection order. This can be done without the assistance of the child’s parents/guardian.

If you or anyone you know is being harassed by another person, you can apply for a protection order under the Protection from Harassment Act.

The application for a protection order must be brought in the manner prescribed by the Protection of Harassment Regulations, 2013, to a magistrate’s court by lodging the application and supporting affidavits with the clerk of the court. An application for a protection order can be made at a magistrate’s court where either the complainant or respondent lives, carries on business or is employed or where the incident or incidents of harassment took place.

In a situation where the protection order is contravened the complainant may then simply hand the warrant of arrest, together with an affidavit, to the police. The State will institute criminal proceedings against the harasser if he or she contravened the protection order. A contravention by a harasser of the conditions of a protection order is punishable with a fine or imprisonment not exceeding five years.
Human Rights Commission celebrates 20 years of promoting human rights

The South African Human Rights Commission (SAHRC) celebrates its 20th anniversary during this year’s commemoration of Human Rights month. The anniversary is a proud milestone of its daily interface with individual citizens, promoting and protecting their human rights. This historic journey coincides with 20th anniversary of the Constitution.

Prior to the adoption of the Constitution, which is still regarded as the most progressive in the world, South Africa suffered some of the worst human rights violations in history. At the dawn of democracy this led to the establishment of Constitutional bodies to strengthen constitutional democracy. The following Constitutional bodies form part of the chapter 9 institutions which aim to promote a culture of human rights as enshrined in the Constitution’s Bill of Rights: the South African Human Rights Commission (SAHRC), the Public Protector, the Commission for Gender Equality (CGE), Auditor General, the Independent Electoral Commission (IEC), the Independent Broadcasting Authority and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission). Human rights refer to all the universal entitlements that are to be enjoyed by all irrespective of race, colour, creed, gender or any other extraneous consideration. These are fundamental freedoms and human dignity which no human should qualify for, but must have full access by the fact of being human.

Since its inception, the SAHRC has been engaged in education and advocacy work to enable citizens to become aware of their rights and how to use the services of the Commission to protect their rights against social ills such as racism, xenophobia, cultural intolerance, homophobia and socio-economic inequalities.

The SAHRC provides the public and government with human rights services in the following categories:

- Access to Justice & Housing
- Basic Services & Health Care
- Children’s Rights and Basic Education
- Disability & Older Persons
In instances where the public lodge a complaint, the SAHRC may resolve it through investigations that result in recommendation based reports.

“Our advocacy work aims to empower citizens to recognize their basic rights and demand accountability on the part of government. The Commission also holds the business sector to account for violating human rights,” says SAHRC Chairperson Advocate Lawrence Mushwana. He explains that the SAHRC endeavors to reach all sectors of the community but there is an urgent need to reach out to people at low socio-economic status and those residing in remote geographic locations like farms and rural areas due to their limited access to information to exercise their rights. By reaching all sectors in the community will be fulfilling SAHRC’s mandate in totality as outlined in the Human Rights Commission Act.

The SAHRC may investigate, report, research, educate and secure redress on matters relating to human rights. Furthermore, the Commission may also intervene to resolve matters after receiving complaints or may even bring proceedings in a competent court or tribunal.

“Our mandate is an ongoing process. Over the years we’ve managed to secure a more sensitive treatment of people with disabilities and held public hearings to ensure government accounts for the backlog in the provision of basic services,” explained Mushwana.

The SAHRC continues to participate in various forums to ensure new policies and legislation are sensitive to the required standards of human rights.

Over the past two years, the SAHRC has placed particular emphasis on business and human rights, especially the role of the mining sector and its impact on the enjoyment of human rights. Advocate Mushwana said the health and environment rights of the residents can be negatively impacted by mining activities like acid mine drainage which can have devastating effect on people, flora and fauna. This led to the development of a Business and Human Rights Country Guide in partnership with the Danish Institute for Human Rights which provides country-specific guidance to businesses with regard to human rights. The guide is useful for investors wishing to invest in South Africa in an ethical manner.

The SAHRC has also been actively involved on the international stage. In the past three years the Commission has been the Chair of the International Coordinating Committee (ICC) of National institutions for the promotion and protection of human rights. This global alliance of national human rights institutions presented an opportunity for SAHRC to contribute to the understanding of the role that national human rights institutions play in the effective promotion and protection of human rights at the international level.

As part of playing a bridging role amongst various role players to translate the international human rights norms and standards into lived realities at the domestic level, the SAHRC is currently participating in the 50th anniversary of the adoption of the two covenants namely, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights which together with the Universal Declaration of Human Rights form the International Bill of Human Rights.

As part of SAHRC 20th year anniversary celebration, the Commission hosted a conference on racism to reflect on human rights and constitutional democracy over the past 20 years. The conference addressed the impact of racism in the country and how far the SAHRC has come in promoting equal human rights for all.
Celebrating our Constitution

As we celebrate Human Rights Day on 21 March, it is a reminder of the sacrifices that accompanied the struggle for the attainment of democracy in South Africa. Justice Today spoke to fellow South Africans to share their views on the impact of Human Rights Month and the Constitution.

Phetheni Nkuna, Bushbuckridge

Human Rights Month is a time for us as a nation to reflect back. We have many reasons to celebrate as a nation. I have access to education. I am free to walk the streets of my country, unashamed of the colour of my skin. I have access to courts of law as a young, black female lawyer. I had a wide range of professions to choose from, not limited by the colour of my skin.

Andrew Avontuur, Johannesburg

I am an Afrikaans-speaking, Coloured man living in South Africa. I am grateful that our Constitution assures everyone the right to freedom of association. I have, over the years, worked very hard in trying to speak other languages, such as IsiZulu, Sesotho, Tshivenda and isiXhosa – this has helped me a lot to get along and converse with colleagues and friends.

Keresa Moonsamy, Tongaat, KwaZulu-Natal

Human Rights Month to me means a celebration of our attainment of democracy. This month of celebration reinforces our democratic values of freedom and equality. It further serves as a reminder of our victory as a nation against the apartheid regime. This month marks our unity as a nation and our spirit of Ubuntu that should always prevail and a respect for our fellow beings, irrespective of their race, gender, creed or disability.
Local learners Clara-Marie Macheke and Claire Rankin from Springfield Convent School in the Western Cape did South Africa proud by scooping a gold at the international School Moot Court Competition held at The Hague in the Netherlands recently.

The South African National Schools Moot Court Competition is an annual moot court competition established in 2011 aimed at creating greater consciousness and understanding in South African schools and communities about the Constitution and the values embodied by it through the active participation of learners in a moot court competition. It is an initiative of the Departments of Basic Education and of Justice and Constitutional Development, as well as the University of Pretoria.
The Constitution of the Republic of South Africa was signed into law by former President Nelson Mandela on 10 December 1996. Chapter 2 of the Constitution contains the Bill of Rights which provides for the following rights:

**Limitation of rights**
The rights in the Bill of Rights may be limited. The limitation must be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

**EQUALITY**
Everyone is equal before the law and may not be unfairly discriminated against.

**HUMAN DIGNITY**
Everyone has inherent human dignity which must be respected.

**POLITICAL RIGHTS**
You may form a political party, run for office and vote for any party in free and fair elections.

**CITIZENSHIP**
No citizen may be deprived of citizenship.

**FREEDOM OF MOVEMENT AND RESIDENCE**
You have the right to enter and leave the republic at will.

**SLAVERY, SERVITUDE AND FORCED LABOUR**
You may not be subjected to slavery or forced labour.

**FREEDOM AND SECURITY OF THE PERSON**
You have a right to be free from all forms of violence and not be detained without trial.

**LIFE**
Everyone has the right to life.

**FREEDOM OF ASSOCIATION**
You have the right to associate with anyone.

**PRIVACY**
Your right to privacy includes your body, home and possessions.

**FREEDOM OF EXPRESSION**
You have the right to speak or express yourself on whatever you choose but hate speech is not allowed.

**LABOUR RELATIONS**
Every worker and employer has the right to organise and negotiate to further their aims.

**ENVIRONMENT**
You have the right to live in a safe, healthy environment.

**CULTURAL, RELIGIOUS AND LINGUISTIC COMMUNITIES**
You have the right to form, join and maintain cultural, linguistic and/or religious groupings of your own choice.

**ACCESS TO INFORMATION**
You may access any information held by the State for the protection of your rights.

**PROPERTY**
No-one may be deprived of property, except in terms of law of general application.

**HOUSING**
You have the right to have access to adequate housing.

**HEALTH CARE, FOOD, WATER AND SOCIAL SECURITY**
You have the right to have access to health care, adequate food, water and social security.

**JUST ADMINISTRATIVE ACTION**
You have the right to administrative action that is lawful, reasonable and procedurally fair.

**ACCESS TO COURTS**
You have the right to resolve your legal disputes in a court or another impartial tribunal.

**FREEDOM OF TRADE, OCCUPATION AND PROFESSION**
You have the right to choose any legal trade or occupation freely.

**FREEDOM OF RELIGION, BELIEF AND OPINION**
You have the right to think, believe in and belong to a religion of your choice.

**ARRESTED, DETAINED AND ACCUSED PERSONS**
When arrested for allegedly committing an offence, you have the right to remain silent, to be brought before a court within 48 hours and to be given legal representation.

**LANGUAGE AND CULTURE**
You have the right to use the language of your choice and practise your own culture.

**CHILDREN**
Every child has the right to a name, nationality and protection from abuse and exploitation.

**EDUCATION**
You have the right to receive basic education in the official language of your choice where that education is reasonably practicable.

**ASSEMBLY, DEMONSTRATION, PICKET AND PETITION**
You have the right to peacefully assemble, demonstrate and protest.

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**FREEDOM OF RELIGION, BELIEF AND OPINION**

You have the right to think, believe in and belong to a religion of your choice.

**ARRESTED, DETAINED AND ACCUSED PERSONS**

When arrested for allegedly committing an offence, you have the right to remain silent, to be brought before a court within 48 hours and to legal representation.

**CULTURAL, RELIGIOUS AND LINGUISTIC COMMUNITIES**

You have the right to form, join and maintain cultural, linguistic and/or religious groupings of your own choice.

**ACCESS TO INFORMATION**

You may access any information held by the State for the protection of your rights.

**PROPERTY**

No-one may be deprived of property, except in terms of law of general application.

**HOUSING**

You have the right to have access to adequate housing.

**ENVIRONMENT**

You have the right to live in a safe, healthy environment.

**FREEDOM OF MOVEMENT AND RESIDENCE**

You have the right to enter and leave the republic at will.

**SLAVERY, SERVITUDE AND FORCED LABOUR**

You may not be subjected to slavery or forced labour.

**FREEDOM AND SECURITY OF THE PERSON**

You have a right to be free from all forms of violence and not be detained without trial.

**LIFE**

Everyone has the right to life.

**EQUALITY**

Everyone is equal before the law and may not be unfairly discriminated against.

**HUMAN DIGNITY**

Everyone has inherent human dignity which must be respected.
Based on their knowledge of the Constitution, human rights and law, the South African team competed against pupils from the United States of America (USA), the Netherlands, Poland, Russia, Venezuela, Argentina, Bulgaria, China, Germany, Mongolia, Romania and Sweden. The competition was hosted by the Justice Resource Centre in New York and The Hague Municipality’s Department of Education from 18 to 22 January 2016.

During an interview with Justice Today, Clara-Marie expressed her excitement when flying to the United Kingdom (UK) for the first time to represent South Africa for the competition. “It was such an amazing experience to compete with the best and win. The students from the USA were very intimidating and confident; they were certain that they will take first place, but to their surprise, they lost,” she said. “Although we were the underdogs, we surprised many from the so-called ‘recognised’ and ‘well-achieved’ countries when we were announced as winners.”

Western Cape Regional Head, Advocate Hishaam Mohamed who saw the girls through the provincial rounds of the competition last year, lauded the pupils. “The department is ecstatic and very proud of the pupils who have excelled against the best in the world. Clara-Marie and Claire have done exceptionally well,” said Advocate Mohamed. ☊
Kelvin Mazungo (30), from Pretoria, is gay and proud of his sexual orientation, and despite him being fully aware of the prejudices against the Lesbian, Gay, Bi-sexual, Transgender and Inter-sex (LGBTI) community, he would never have thought that he would one day fall victim to intolerance.

Mazungo shares his story with Justice Today. While standing in a queue one afternoon, he was approached by a few people. “They told me to decide if I am a man or a woman, and said that gays and lesbians have brought a strange lifestyle to their communities,” said Mazungo. The insults gained momentum and soon a mob grew, and he was pushed around. Fearing for his life, he ran away.

Mazungo’s case received the attention of the National Task Team (NTT) on Gender and Sexual Orientation-Based Violence perpetrated against LGBTI persons. The NTT was established by the Department of Justice and Constitutional Development in 2011 with the aim of tracking, and intervening, on hate crime cases committed against LGBTI persons. The committee includes representatives from the departments of Justice and Constitutional Development, Social Development, Correctional Services, Cooperative Governance and Traditional Affairs, Government Communications and Women, Children and People with Disabilities, as well as Chapter 9 institutions, the South African Council of Churches and various civil society organisations.

According to the NTT Interim co-chair Steve Letsike, Mazungo’s case is heartbreaking. She explained that she is making sure that Mazungo, and others affected by intolerance like him, are placed in contact with relevant government departments to raise awareness of their plight and to receive assistance with the services they are looking for. “We are trying to find effective ways to rapidly respond to victims, but it is becoming clear that in order to prevent such incidents, the NTT has to fast track the implementation of the National Intervention Strategy activities like community dialogues, awareness initiatives and the roll-out of the Rapid Response Teams through the Provincial Task Teams,” she said.

Leading the departmental efforts in this regard, Deputy Minister John Jeffery highlights that at the heart of all the LGBTI work by the department, the central message of changing societal attitudes remain: “To have the most progressive laws on the statute book is not enough. We must build communities and a society in which LGBTI persons are accepted and respected.
regardless of the colour of our skin, our gender or our sexual orientation,” Deputy Minister Jeffery said.

Since the establishment of the NTT there has been a significant change in addressing LGBTI cases. Advocate Johanna Mabote from the National Prosecuting Authority (NPA), expressed appreciation for the positive impact the Task Team has had on the work of the NPA at national and provincial levels. “We are encouraged by the progress made in all the LGBTI cases on the court roll, particularly convictions and sentences of hate crimes committed against the late Disebo ‘Gift’ Makau and Duduzile Zozo where the offenders received imprisonment sentences of two life sentences and additional 15 years; and 30 years, respectively,” Advocate Mabote said. She further added, as a result of the multi-stakeholder information sharing by the Provincial Task Teams, prosecutors in the provinces are better equipped to handle LGBTI related cases.

Provincial Task Teams in the North West, Gauteng and KwaZulu-Natal rolled out their campaigns in November 2015, with the remaining provinces finalising plans.

The plans include developing prevention programmes to address violence and discrimination perpetrated on the grounds of sexual orientation and gender identity; to improve the response of the criminal justice system in addressing such violence and discrimination; and to strengthen the capacity of state and civil society institutions and systems to address and prevent such violence and discrimination.

If you have been a victim of LGBTI discrimination, you can report your case at your nearest police station, and bring forward a case at an equality court.

What are equality courts and where can you find them?

Equality courts are specialised courts designated to hear matters relating to unfair discrimination, hate speech and harassment. In terms of the Act all High Courts are equality courts for their area of jurisdiction. The department has also designated all magistrates’ courts to serve as equality courts in all the 9 provinces.

First for Africa

Minister Michael Masutha recently launched the Africa Seminar on Sexual Orientation Based Violence in Johannesburg. The seminar, hosted by the South African Human Rights Commission sought to find practical solutions to address violence and discrimination perpetrated on the bases of sexual orientation, gender identity and expression.

According to Minister Masutha, there are many areas of work being done by the United Nations, leading to successful outcomes that actually ensure that these issues are sustained on the global agenda. In June 2015, the UN High Commissioner for Human Rights issued a report on human rights violations against individuals based on their sexual orientation and gender identity. It showcases advances in the protection of the rights LGBTI persons which include the introduction of new anti-discrimination and hate crime laws, legal recognition of same sex relationships, protection of intersex children, and changes that make it easier for transgender people to have their gender identity legally recognized. The report also highlights that LGBTI people continue to face pervasive, violent abuse, harassment and discrimination.

“As a country we have demonstrated our commitment to protection of the LGBTI individuals...At the heart of the work to be done, lies one central message, that we must change societal attitudes. That as national human rights institutions we must ensure the protection of the rights of every human being regardless of our differences, that as civil society we must strive to effect positive change in our societies and as Government we must respect, promote, protect and fulfill the human rights all our people.”

“The most important message we need to send is one of our common humanity. Regardless of the colour of our skin, our gender or sexual orientation, gender identity and expression, we all want the same things - respect, care, compassion and acceptance. We are all human beings. It is a message that we must spread all over Africa. We must build communities and a society in which persons are accepted and respected, irrespective of one’s sexual orientation, gender identity and expression,” said Minister Masutha.
With the on-going scourge of racism brewing in the country, South Africans need to be aware of how the Equality Courts can provide recourse.

The department has designated a large number of courts as Equality Courts. These courts, situated in all Magistrate’s Courts and High Courts across the country, hear matters regarding unfair discrimination and publication of information that unfairly discriminates or constitutes hate speech.

According to Deputy Minister John Jeffery, the right to equality is one of the most fundamental rights in the constitution. The Constitution safeguards people’s right from unfair discrimination, including but not limited to, sex and gender; hate speech and harassment.
To date, all 394 Magistrate Courts and 14 High Courts across the country are eligible to hear Equality matters. Since 2005, the department has almost doubled the number of Equality Courts, from 220 in 2005 to 408 to date, demonstrating that there is commitment from the government to promote the right to equality. The courts also hear complaints that involve conditions or applications for employment, which in some instances may involve the Labour Court or the Committee for Conciliation, Mediation and Arbitration (CCMA).

Collin Kubheka, a 38-year old from Ekurhuleni, approached the Equality Court in 2015 after he was called a derogatory name by his girlfriend’s neighbour during an argument. “After reporting the matter to the police, he attended a court case at the Equality Court during which the defendant was ordered to apologise and refrain from using such language in the future,” he explains. Kubheka added that the entire court process was cost efficient because he did not have to hire a lawyer.

“I am happy with the swift manner in which the matter was handled and I’m also satisfied with the outcome,” he said. Working hand in hand with the department to promote the right to equality is the South African Human Rights Commission (SAHRC) and the Commission for Gender Equality (CGE).

SAHRC Chairperson, Advocate Lawrence Mushwana said the SAHRC cooperates with the Equality Courts by supporting constitutional democracy through its commitment to promote respect for, observance and protection of human rights for everyone without fear or favour.

According to CGE Chairperson Mfanozelwe Shozi, the organisation assists in assessing complaints received and makes recommendations to Equality Courts. “If it is decided that the matter is to be heard by the Equality Courts, the Commission for Gender Equality assists the complainant in taking the matter forward,” he said.

Equality Court proceedings resemble civil matters, in that the finding rests on a balance of probabilities and there are no prosecutors involved. The courts are intended to be open and accessible forums where any person may bring proceedings free of charge. Proceedings are inexpensive by virtue of the fact that legal representation is not a requirement.

Equality Courts are provisioned to make an appropriate order, including payment of damages to the respondent for actual financial loss of dignity or pain and suffering (including emotional and psychological suffering); payment of a fine or donation to an appropriate organisation; or an order that the respondent makes an unconditional apology, among others.

### Amending the Constitution

Did you know that this year marks the 20th anniversary of the Constitution? The Constitution was signed into law by former President Nelson Mandela on 10 December 1996 in Sharpeville. Over 2 million people participated in the making of the South African Constitution.

Over the past 20 years there have been amendments to the South African Constitution. Each new amendment was made with the intention to improve our justice system and create a better life for all South Africans.

On 1 April 2001, President Thabo Mbeki assigned the administration of the Constitution of the Republic of South Africa, 1996, to the Minister of Justice and Constitutional Development. From 4 February 1997 to 31 March 2001 the then Department of Constitutional Development was responsible for the administration of the Constitution and promoted the following Constitutional Amendment Acts:

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<thead>
<tr>
<th>Act</th>
<th>Date of Commencement</th>
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<tr>
<td>Constitution Fifth Amendment Act of 1997</td>
<td>4 February 1997</td>
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<tr>
<td>Constitution Fourth Amendment Act of 1999</td>
<td>19 March 1999</td>
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#### Constitution First Amendment Act of 1997
This Act amended the Constitution to make further provision in relation to the oath sworn or affirmation made by an Acting President and to extend the cut-off date in respect of the granting of amnesty. **Date of commencement:** 4 February 1997

#### Constitution First Amendment Act of 1997
This Act amended the Constitution to extend the term of Municipal Councils and also to provide for the designation of alternates in respect of certain members of the Judicial Service Commission. The Act also changed the name of the Human Rights Commission to the South African Human Rights Commission. The Act adjusted the powers of the Public Service Commission and extended and modified the application of transitional arrangements in respect of local government. **Date of commencement:** 7 October 1998

#### Constitution Third Amendment Act of 1998
The Constitution was amended in terms of this Act to provide that, where a municipal boundary is determined across a provincial boundary, national legislation must make provision for establishing a municipality of a type agreed to by the provincial governments concerned and for the exercising of executive authority over that municipality. **Date of commencement:** 30 October 1998

#### Constitution Fourth Amendment Act of 1999
This Act amended the Constitution to enable a proclamation calling and setting dates for an election of the National Assembly to be issued either before or after the expiry of the term of the National Assembly. The Act also affected an amendment to the Constitution in order to do away with the requirement that the chairperson and deputy chairperson of the Financial and Fiscal Commission must be full-time members of that Commission. **Date of commencement:** 19 March 1999
Constitution Sixth Amendment Act of 2001
This Act amends the Constitution of the Republic of South Africa, 1996, so as to change the title of the President of the Constitutional Court to that of Chief Justice, to provide for the offices of Deputy Chief Justice, President of the Supreme Court of Appeal and Deputy President of the Supreme Court of Appeal, to provide for the extension of the term of office of a Constitutional Court judge, to further regulate the appointment of Deputy Ministers, to make provision for municipal borrowing powers and to enable a Municipal Council to bind itself and a future Council in the exercise of its legislative and executive authority to secure loans or investments for the municipality concerned.

Constitution Seventh Amendment Act of 2001
This Act amends the Constitution so as to, among others, enable a member of Municipal Council to become a member of another party whilst retaining membership of that Council, to enable an existing party to merge with another party or to subdivide into more than one party.

Constitution Eighth Amendment Act of 2002
This Act amends the Constitution so as to, among others, enable a member of Municipal Council to become a member of another party whilst retaining membership of that Council, to enable an existing party to merge with another party or to subdivide into more than one party.

Constitution Ninth Amendment Act of 2002
The Act amends the Constitution so as to further regulate the allocation of delegates to the National Council of Provinces.

Constitution Tenth Amendment Act of 2003
This Act, among others, deals with members of the National Assembly or a Provincial Legislature becoming members of other parties whilst retaining membership of the National Assembly or a Provincial Legislature.

Constitution Eleventh Amendment Act of 2003
This Act deals with the change of name of Northern Province to Limpopo and regulates anew some of the financial arrangements in the Constitution, e.g. to deal with financial crises at various levels of government.

Constitution Twelfth Amendment Act of 2005
This Act amended the Constitution so as to, among others, re-determine the geographical areas of the nine provinces of the Republic of South Africa.

Constitution Thirteenth Amendment Act of 2007

Constitution Fourteenth Amendment Act of 2008; and Constitution Fifteenth Amendment Act of 2008
These Acts sought to abolish floor-crossing and further regulate matters relating to the funding of political parties.

Constitution Sixteenth Amendment Act of 2009
The Act aims to amend the Constitution of the Republic of South Africa, 1996, in order to re-determine the geographical areas of the provinces of Gauteng and North-West and to provide for matters connected therewith.

Constitution Seventeenth Amendment Act of 2012
The Act amended the Constitution of the Republic of South Africa, 1996, so as to further define the role of the Chief Justice as the head of the judiciary; to provide for a single High Court of South Africa; to provide that the Constitutional Court is the highest court in all matters; to further regulate the jurisdiction of the Constitutional Court and the Supreme Court of Appeal and to provide for the appointment of an Acting Deputy Chief Justice.
Recently, we have observed several incidents of racial intolerances in our country. As South Africans we owe it to ourselves to rid our communities of these injustices and make unity in diversity a reality, as enshrined in the Constitution.

In order to deal with these intolerances, government has developed a National Action Plan (NAP) on racism, racial discrimination, xenophobia and related intolerance to provide the basis for the development of a comprehensive public policy against discrimination. The plan aims to assist South Africa in fulfilling its international human rights obligations related to the elimination of racism, racial discrimination, xenophobia and related intolerance.

South Africa was invited by the United Nations to host the Third World Conference against Racism, Racial Discrimination, xenophobia and related intolerance, also known as the Durban Conference in 2001. The invitation was extended in recognition of the struggle experienced by the people of South Africa against the system of apartheid and the country’s transition to democracy. The Durban Conference adopted the historic Durban Declaration and Programme of Action which urges States to establish and implement national policies and action plans to combat all kinds of intolerances.

The NAP assists South Africa to fulfil its
international obligation highlighted by the Durban Conference. South Africa has fulfilled its mandate to produce a draft National Action Plan (NAP) to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance and is now consulting widely on this document.

According to Danaline Franzman, Chief Director for Social Justice and Participatory Democracy, the overall goal of the NAP is to build a non-racial, non-sexist society based on the values of human dignity, equality and the advancement of human rights and freedom. “It is also a process of bringing all relevant stakeholders and role-players together to discuss the challenge of combating racism, racial discrimination, xenophobia and related intolerance,” Franzman said.

The success of the NAP depends on the contribution of all South Africans. Government calls on all the citizens, civil society, Chapter 9 institutions, faith-based organisations, business, labour, and media houses to get involved, and send comments and inputs on the draft NAP.

“It is extremely important for South Africans to read the draft NAP and to send through their comments. We need the public to share their stories and experiences and help us come up with practical suggestions and solutions to address these challenges,” said Franzman.

The National Action Plan (NAP) on racism, racial discrimination, xenophobia and related intolerance aims to:

- promote human dignity through the promotion and protection of human rights
- raise awareness of anti-racism, equality and anti-discrimination issues among public officials, civil society and the general public
- ensure that the concerns of individuals and groups encountering racism, racial discrimination, xenophobia and related intolerance are more effectively addressed
- facilitate the identification of legislation that needs to be amended and or adopted with a view to improving the protection of victims
- generate a more equal society and strengthen the rule of law and democracy.

Comments and inputs to the draft NAP can be submitted via email to nap@justice.gov.za.

You can find the Cabinet approved Draft NAP document on www.justice.gov.za.

For more information, contact Danaline Franzman, Chief Director: Social Justice and Participatory Democracy, Department of Justice and Constitutional Development on 012 315 1500/ 1487 or Email: DFranzman@justice.gov.za.

Closing date for submissions is 30 June 2016.
The department recently launched the draft National Action Plan (NAP) to Combat Racism, Discrimination, Xenophobia and Related Intolerance at a consultative dialogue with stakeholders in the Western Cape. The NAP forms the basis for the development of a comprehensive policy framework to fight the scourge of racism, discrimination and xenophobia. The event highlighted the importance and rollout of public consultations to South Africans to also come forward and make their inputs to the draft National Action Plan that will be submitted to Cabinet for approval.

According to Deputy Minister John Jeffery, the NAP belongs to everyone in the country. “It is not Government’s NAP, it is not civil society’s NAP, it is our country’s NAP and the challenge lies therein as to how to ensure that all our people are given the opportunity to provide input in the process. Ultimately, ownership of the NAP should reside with the people.”

To further highlight the department’s commitment, Deputy Minister John Jeffery, Director-General Nonkululeko Sindane and former political prisoner and anti-apartheid activist Ahmed Kathrada signed a pledge to stop racism.

Visit our Facebook page DOJCD to watch a clip of DG Nonkululeko Sindane talking about the draft NAP.
Over the years, government has continued to take a firm stand in relation to the protection of the rights of children, in line with the Bill of Rights of the Constitution. Legislation such as the Children’s Act, 38 of 2005 has been introduced to show government’s commitment to placing the rights and interests of children first.

In 2005, the Children’s Act came into effect which, among others, provides for the establishment of children’s courts. According to Ms Pritima Osman, Senior Legal Administration Officer responsible for the Child Justice in the Department of Justice and Constitutional Development, children’s courts were established to implement the provisions of the Children’s Act. “Children’s courts were established to deal with all aspects relating to care and protection of children. Among other matters which affect children, these courts address cases of adoption, child placements in a home and the removal of a child, and the rights and responsibilities of parents,” said Osman.

She highlights that anyone can approach a children’s court if they know of any child who is suspected of being a victim of child labour, is in a child-headed household,
lives or works on the streets or begs for a living, is addicted to a dependence-producing substance and is without any support to obtain treatment for such dependency, or is being exploited and lives in circumstances which may seriously harm that child’s wellbeing.

According to statistics compiled by the department’s National Operations Centre (NOC), in the 2013/2014 financial year, 76 799 cases were opened and 66 289 were finalised at children’s courts across the country. In the 2014/2015 financial year thus far, 75 215 cases have been opened and 61 119 of these were finalised countrywide.

Osman further highlights that children’s courts are easily accessible to the public and can be found at every magistrate’s court. To date, there are 713 children’s courts in the country.

The Department works closely with the Justice, Crime Prevention and Security (JCPS) cluster which include the Department of Social Development, Basic Education, Health and the South African Police Service (SAPS) to assist in achieving its mandate of caring for children in the country.

Children’s courts are largely dependent on social workers who conduct investigations on matters reported by the public. “The presiding officer at the children’s court considers a report from a designated social worker on the circumstances surrounding a child. A social worker also makes recommendations on how a family can be assisted,” elaborated Osman. Unlike other courts, says Osman, the children’s court is child-friendly and legal representation is not a requirement when attending matters presented at these courts.

To find a children’s court nearest to you, or for more information, visit www.justice.gov.za.

**In 2008, the Child Justice Act came into effect, focusing on the manner in which the courts should deal with children who are in conflict with the law or have been accused of committing criminal offences. The Act sets up a criminal justice system for children, while considering that the offender is a child (under the age of 18 years). Importantly, the Act also contains alternative methods of sentencing child offenders, so that they are not exposed to the formal correctional system along with adults. These alternatives may include diversions such as placement under supervision for a minor offense or receiving professional help for serious offenses. Another form of deviation is community service where a child offender is assigned a certain number of hours to do work which is of benefit to the community at large.**