

**PROPERTY LAW**

## Human Rights - Frequently Asked Questions

*Read this QuickLaw guide to find answers to the most frequently asked questions surrounding the Bill of Rights and human rights in South Africa.*

**For all your human rights questions and answers, simply follow our guide below:**

1. [Does the Bill of Rights apply to everyone?](#)
2. [Which courts can enforce a person's human rights?](#)
3. [What powers do the South African Human Rights Commission \("SAHRC"\) have?](#)
4. [What are some examples where a person's human rights have been heard in court?](#)
5. [How can LegalWise assist you?](#)

### **1. Does the Bill of Rights apply to everyone?**

- Most of the rights in the Bill of Rights make use of the words "everyone" or "no-one". For example, "everyone has the right to life". The use of these words are wide enough to include every single person in South Africa, whether that person is a citizen or not.
- There are certain instances where the rights are limited to a specific group of people. For example, "every adult citizen has the right to vote". This means that a person who is in South Africa, but who is not an adult citizen, cannot vote.

### **2. Which courts can enforce a person's human rights?**

- There are various courts that can enforce a person's human rights and decide on the constitutionality of a law that might limit a person's human rights.
- These courts are the High Court, Supreme Court of Appeal and Constitutional Court. Some specialised courts, such as the Equality Court, may also decide on constitutional matters in certain instances relating to the right to be treated equal.

- Even though there are other courts that can hear constitutional matters, the Constitutional Court is the highest court in South Africa and has the final say. This means that if the High Court or the Supreme Court of Appeal declares that a certain piece of legislation is against the Constitution, the Constitutional Court will have to make a final decision on that aspect.

### **3. What powers do the South African Human Rights Commission (“SAHRC”) have?**

- The SAHRC is a government institution, which promotes, monitors and protects human rights. The SAHRC can investigate, resolve, provide advice to, and assist victims of human rights violations.

### **4. What are some examples where a person’s human rights have been heard in court?**

- Some of the more notable cases regarding a person’s human rights are as follow:
- A Hindu student in a school was being unfairly discriminated against as she was prohibited to wear a nose ring as part of her religious practice. On the other hand, the school allowed other students to wear jewellery proclaiming their religious belief but she was not. The Constitutional Court held that there was an unfair limitation of the student’s right to religious freedom and equality, and that the Constitution would not allow for a limitation in this matter.
- The High Court held that in private cases of succession, a beneficiary had no right to inherit. Any beneficiary mentioned in a person’s Will is merely eligible to inherit. Where beneficiaries are limited to only males, a person’s right to equality cannot be infringed as they had no right to inherit equally in the first place.
- A Rastafarian argued that his right to religious freedom was being violated because he was not allowed to smoke dagga as part of his religious practices. The Constitutional Court held that the limitation of the right to religious freedom was justified in light of the fact that government was dealing with a drug problem in general and allowing religious exemptions to use a drug would result in onerous difficulties for the police in enforcing these laws.
- The High Court recently declared certain sections relating to the private use of dagga unconstitutional and invalid. This decision is based on a person’s right to privacy and is placed on hold to give the legislature a chance to change the legislation. During this period in which the decision is placed on hold, it will be *deemed* to be a defence if a person used the dagga in his/her own home for personal purposes. However, this does not mean that the use of dagga is legal, only that the legal position has been placed on hold. This case is currently at the Constitutional Court

for final decision.

## **5. How can LegalWise assist you?**

Should you require an explanation of your rights on this topic, please contact your nearest [LegalWise Branch](#), call, e-mail or WhatsApp us. For more information about our membership options visit our [legal services](#) page or visit our [join now](#) page.

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