

Human Rights in Education





Selected human rights in education

- Chapter 2 of the Constitution
- Examples:
 - Children's rights
 - Education rights
 - Equality
 - Privacy, security, dignity
 - Language
 - Religion, belief and opinion
 - Freedom of expression
 - Administrative justice

Obligations of the state

- State: Section 7 of the Constitution compels the state to “*respect, protect, promote and fulfil the rights in the Bill of Rights*”
- Respect -Deny or obstruct the right to education, unfairly discriminate
- Protect- protect individuals from interference by third parties
- Promote- inform people of their right to education
- Fulfil -to advance, fund in an equitable way
- **Section 8(1): ‘The Bill of Rights binds the legislature, the executive, the judiciary and all organs of state’.**

Values entrenched in the Constitution

- Human dignity, the achievement of equality and the advancement of human rights and freedoms;
- Non-racialism and non-sexism;
- Supremacy of the Constitution and the rule of law;
- Accountability, responsiveness and openness.

Grouping of rights

- Political and civil rights – individual's freedom of action and choice – state to protect
- Economic and social rights – health, safety, education – positive obligation on state to provide
- Third generation rights - clean environment, to development and the rights of minorities – state to protect

Interpretation of the Bill of Rights

- ▶ Every tribunal, forum, authority must:
 - ▶ Promote human dignity, equality and freedom
 - ▶ Consider international law
 - ▶ Consider foreign law
 - ▶ Promote the spirit, purpose and objectives of the Bill of rights

Application of the Bill of Rights

- ▶ Applies to all law
- ▶ Binds legislature, executive and judiciary
- ▶ Binds all natural persons and
- ▶ Binds all juristic persons

- ▶ Concepts to understand:
 - ▶ **Natural persons**
 - ▶ **Juristic persons**

Limitation of rights

- ▶ Section 36(1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is **reasonable and justifiable** in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including
- ▶ the nature of the right;
- ▶ the importance of the purpose of the limitation;
- ▶ the nature and extent of the limitation;
- ▶ the relation between the limitation and its purpose; and
- ▶ less restrictive means to achieve the purpose.
- ▶ (see p. 41-44) and Read the Constitution

Limitation of rights

- The relationship between rights can be a limitation
- The formulation of the right may imply a limitation
- **All rights may be limited**
- Must be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom
- A proportionality test must be applied (**balance**)

Difference between a right and a privilege

- ▶ Western Cape Resident's Association obo Williams and Another v Parow High School 2006 (3) SA 542 (C)
- ▶ Remember schools may deny learners certain **privileges** such as attending a matric farewell if they misconduct themselves.
- ▶ Schools may not exclude learners from school activities related to the curriculum
- ▶ Going on sport and cultural tours are not rights, they are privileges

Equality

- **9(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.**
- **9(2) Equality includes the full and equal enjoyment of all rights and freedoms.**
- Affirmative action : see Sec 9(2)
- The state may not unfairly discriminate – 17 grounds mentioned: Sec 9
- Direct and indirect discrimination

Differentiation and discrimination

- ▶ Constitutional Court in *Prinsloo v Van der Linde* 1997 6 BCLR 759 (CC)

Treating persons differently in a way which impairs their fundamental dignity as human beings who are inherently equal in dignity. *Unfair discrimination* refers to any situation where people are treated differently without justification.

- ▶ Constitutional Court in *Harksen v Lane* NO 1977 11 BCLR 1489 (CC) par 53.

If the differentiation amounts to “discrimination, the question is whether it amounts to “unfair discrimination”. Discrimination based on a ground specified in section 9(3), will be presumed unfair unless the contrary is proved



FUSION



Privacy, security, dignity

sec 10, 12 and 14

- All three rights must be considered simultaneously.
- Prioritise – safety comes first
- Schools Act, section 8 and 8A
- Searches and seizure:
 - **Two variables that must be considered under the reasonableness standard, that is,**
 - **the thing (dangerous weapons or drugs) that the searcher is seeking and the**
 - **sufficiency of the information or the informant who led the searcher to believe a search was necessary.**

Freedom of religion, belief and opinion

- National Policy on Religion and Education (not an act)
 - Distinguish between religion education and religious observances
 - Role of the SGB in the above
- When and how may schools conduct religious observances?
 - Study sec 15 (2)
- Christian Education South Africa v Minister of Education
 - Issue: corporal punishment and the Bill of Rights

Language rights and education

- ▶ MEC Western Cape, HOD Western Cape and Parent and SGB Mikro Primary School (p. 94)
- ▶ Laerskool Middelburg v Departementshoof, Mpumalanga DOE (p.148) *Judgment in Afrikaans*
- ▶ Seodin Primary School and others v Northern Cape Department of Education and another 2006 91) All SA 154 (NC) (p. 157)
Seodin Primary, Kalahari High, NC Agricultural, Kuruman Primary
- ▶ Hoërskool Ermelo, beheerliggaam van HE v Departementshoof van Onderwysdepartement Mpumalanga saakno 3062 van 2007
- ▶ HS Ermelo v HoD of MDoE [2009) Appeal case





Issues in these language cases

- Constitution, sec 9, 29(2), 30, 31
- Schools Act, sec 5, 5A, 6(2), 16, 22
- National Language in Education Policy
- School's own language policies
- Duty of the state
- Best interests of the learners

Freedom of expression

- Difference between freedom of speech and freedom of expression
- *Antonie v Governing body, Settlers High School*
- Issues here:
 - Dignity
 - Freedom of expression: media, press, ideas, creativity, academic freedom – also what a person wears

Assembly, demonstration, association and labour rights

- Demonstration: to exercise this right all demonstrations must be peaceful and unarmed.
- Freedom of Association: nobody may be forced to belong to a group/association/union
- Or prohibited to associate with a group/association/union
- Everyone has the right to fair labour practices

Children's rights

- Sec 28 Constitution : To be protected from maltreatment, neglect, abuse or degradation
- Children's Act 38 of 2005
 - All proceedings, actions or decisions in a matter concerning a child must-
 - (a) respect, protect, promote and fulfil the child's rights set out in the Bill of Rights, the best interests of the child standard set out in section 7
- Child Justice Act (2009) -To establish a criminal justice system for children, who are in conflict with the law and are accused of committing alleged offences, in accordance with the values underpinning our Constitution

The right to education

Section 29

- everyone's right to basic education including adult basic education; and to further education, which the state, through reasonable measures, must make progressively available and accessible.;
- instruction in an official language/s where reasonably practicable, ...
- the state must consider all reasonable educational alternatives, including single medium institutions, taking into account-
 - (a) equity;
 - (b) practicability; and
 - (c) the need to redress the results of past racially discriminatory laws and practices.
- Establish and maintain independent educational institutions, including the right of cultural, religious and linguistic communities to establish their own institutions.

Special needs education (not a defined right)

- White Paper 6
 - Issues: not legislation, therefore not legally binding on schools to admit learners with special education needs.
 - Schools Mission statement
 - Challenges (infra structure/ trained staff/ funding/ LTSM)
 - Equality/dignity/safe environment

Administrative justice

- Promotion of Administrative Justice Act, 3 of 2000 (PAJA)
- All actions that affects a person's rights must follow due process
- Due process means the correct administrative procedure
- Decisions – reasonable, fair and justifiable
- Explain what is reasonable, fair and justifiable, using an example



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