Introduction

Your trainer is: _____

This training workshop was developed by **Cheadle Thompson & Haysom** and **Resolve Trainingworks** for the **Commission on Gender Equality**

Cheadle Thompson & Haysom has grown from a small law practice, started by three legal academics from the University of the Witwatersrand, into a leading South African law firm with offices in Johannesburg and Cape Town, providing a diverse range of legal services. Initially specialising in human rights law and labour law, we have since 1994 broadened our areas of expertise along with our growing client base. These include:

- constitutional law
- public sector law, including the drafting of laws
- labour law
- commercial, corporate and competition law
- telecommunications, media and information technology law
- plain languaging of legal documents

Commission on Gender Equality is one of the six State Institutions Supporting Constitutional Democracy called for in the 1996 Constitution. The aim of the Commission, as set out in section 187 of the Constitution is to promote gender equality and to advise and make recommendations to Parliament or any other legislature with regard to any laws or proposed legislation which affects gender equality and the status of women.

The CGE is independent and subject only to the Constitution and the law. It must be impartial and must exercise its powers and performance functions without fear, favour or prejudice.[1] It is governed by the Commission on Gender Equality Act, 1996[2] which sets out its wide-ranging powers and functions. The main powers and functions of the CGE are:

- monitoring and evaluating the policies and practices of both government and private sector institutions;
- public education and information;
- making recommendations to government to promote gender equality, including recommending changes to existing legislation and proposing new legislation;
- resolving gender-related disputes through mediation, conciliation or negotiation;

[1] Section 181(2), Constitution.
[2] Act 39 of 1996.

- investigating gender inequality; and
- monitoring compliance with international instruments promoting gender equity.[3]

Resolve Trainingworks is a wholly-owned subsidiary of the **Resolve Group**, a leading human resource and industrial relations consultancy, which offers strategic human resource and labour relations advisory services. We are a medium-sized, values-based South African company with approximately 40 professionals and a wide network of partners to ensure the right mix of substantive expertise, comparative experience and local knowledge. **Resolve Trainingworks** offers specialist services related to the design and delivery of short learning programmes, including skills programmes and both credit bearing and non-credit bearing short courses. These specialist services are undertaken in a way that is aligned to organisational strategy and/or complements broader organisational change.

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[3] Section 11 of Commission on Gender Equality Act.

Section 1

Introduction

At the end of this section you will be able to:

- Describe the housekeeping details applicable to this workshop
- Describe the outline of this workshop
- Identify your own objectives for this workshop
- Locate the glossary of useful terms

Workshop housekeeping

	Notes
♦ Starting times and ending times	
♦ Tea and lunch breaks	
♦ Toilets	
♦ Speaking rules and group work	
♦ Language	
♦ Use of cellular phones	
♦ Smoking	
♦ File and materials	

Workshop objectives

As a result of this workshop, you will be able to understand:

- What is poverty?
- What causes poverty in South Africa?
- How is poverty measured?
- The relationship between poverty and race?
- How poverty impacts on women in South Africa?
- The relationship between poverty and gender based violence?
- Understand the legal and policy framework, including:
    - International and regional instruments dealing with poverty, gender and gender based violence and relevant case law; and
    - South African legislation dealing with poverty, gender and gender based violence and relevant case law
- Identify the origin of the Equality Act
- Describe the limitation of rights
- Describe the implications of the right to equality in the Bill of Rights
- Describe the objectives, interpretation and guiding principles of the Equality Act
- Identify the scope of the Equality Act
- Describe the structures and institutions of the Equality Act
- Describe the role of the Commission on Gender Equality in terms of the Equality Act
- Describe the enforcement mechanisms of the Equality Act

Participant's introduction & objectives

☞ **On your own, consider what YOU would like to get out of this workshop and why it is important to you. Write your answer in the space provided below.**

Name: _____

Position: _____

Objectives: _____

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3. The legal and policy framework	International Instruments Regional Instruments South African legislation	
4. An introduction to the Equality Act	The origin of the Equality Act The Bill of Rights and the right to equality Limitations on rights The Right to Equality	
5. Key provisions of the Equality Act	The scope of the Equality Act The prohibition on unfair discrimination The institutions and structures of the Equality Act Enforcement of the Equality Act	
6. Final reflection, evaluation and closure	Review of your learning objectives Evaluation of the workshop	
7. Resources	The Bill of Rights The Equality Act	

Glossary of useful terms

Absolute poverty	Absolute poverty (extreme poverty) is synonymous with extreme want or deprivation. Absolute poverty has to do with the deprivation of individuals relative to some absolute and predetermined norm(s) and standard(s) taken by any society as a suitable measure of the minimum necessities of life or of a minimally accepted standard of living.
CGE	Commission on Gender Equality
Discrimination	Any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly- a) imposes burdens, obligations or disadvantage on; or b) withholds benefits, opportunities or advantages from, any person on one or more of the prohibited grounds.
Direct Discrimination	Occurs when a person is treated less favourably than another is in a comparable situation because of their racial or ethnic origin, religion or belief, disability, age or sexual orientation, or any of the prohibited grounds. An example of direct discrimination is a job advert, which says, "no women need apply."
Gender	Social roles allocated respectively to women in particular societies and at particular times. Gender is different from sex which is biologically determined.
Indirect Discrimination	A wider concept which is concerned with the effect of apparently neutral provisions that have a disproportionate impact on a group of employees. For example, recruitment or selection criteria based on characteristics such as height, physical strength or educational qualifications, which are not essential for the job, may constitute **indirect** unfair **discrimination.**
Patriarchy	The term patriarchy is used in this manual to refer to the hierarchy of authority that is controlled and dominated by males in which women are considered.
Relative poverty	Relative deprivation has to do with the deprivation of individuals relative to others in the society in which they function. When measuring relative deprivation or inequality the distribution of income, wealth and benefit within the society and community is considered.

Section 2
An Introduction to poverty

At the end of this section you will be able to:

- Define poverty
- Explain the causes of poverty in South Africa
- Understand how is poverty measured
- Explain the relationship between poverty and race
- Describe how poverty impacts on women
- Explain the relationship between poverty and gender based violence

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Poverty quiz

Individually, and then in pairs, read the information below and record your responses to the questions which follow

Introduction

The fight against poverty dates back to the beginning of human history and continues to confront us in the new millennium. No where is this fight more stark than in the context of gender and poverty in Africa. In South Africa particularly, women are exposed to multiple forms of oppression on the basis of race, class, gender and economic status, all of which combined relegate them to the bottom of the social ladder.
At the World Summit on Sustainable Development held in 2002, President Mbeki reiterated that "a global human society based on poverty for many and prosperity for a few, characterised by islands of wealth, surrounded by a sea of poverty, is unsustainable"[4]

What is poverty?

The Oxford English Dictionary defines poverty as:

> 'The condition of having little or no wealth or material possessions; indigence, destitution, want'.

In recent years, research tapping the perspectives of poor people has recognised that poverty involves a wider set of deprivations, including vulnerability and susceptibility to gender based violence in addition to material destitution.

Poverty is therefore the inability to attain a minimal standard of living, measured in terms of basic consumption needs or the income required to satisfy them. The condition of being poor is affected by a complex mix of cultural, legal and social factors. People can be reduced to poverty if their way of life is threatened, or if they do not have access to land, money or other resources to enjoy a

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[4] "World Summit declares 'Fault Line' between rich and poor threatens prosperity, adopts broad measures to alleviate poverty, protect environment" at http://www.un.org/events/wssd/summaries/envdevj35.htm accessed on 1 September 2004

reasonable standard of life. What is considered to be a reasonable standard of life differs between societies. Race, gender, familial status and age are some of the characteristics that enhance the risk of living in poverty. Poverty is multidimensional and complex.

For many households in South Africa, there is a limited access to education, healthcare, nutritious food, reliable sources of income, shelter, energy and clean water. The poor, both urban and rural, often live in marginal and degraded environments. In recent years, the erosion of social institutions and networks has exacerbated problems related to poverty and vulnerability.

Challenges within the gender and poverty nexus concern the ideas of access to resources, decision-making and control. Prosperity is measured to the extent by which all citizens have access to good health care, educational facilities, shelter, land and other life amenities. Lack of access to these services and the infrastructure necessary to sustain basic human capabilities are indirect measures of human poverty. Thus the eradication of human poverty implies sustainable access to quality social services for all.

How is Poverty measured[5]

There are two ways in which poverty can be measured:

- absolute poverty; and
- relative poverty.

Absolute poverty (extreme poverty) is synonymous with extreme want or deprivation. Absolute poverty has to do with the deprivation of individuals relative to some absolute and predetermined norm(s) and standard(s) taken by any society as a suitable measure of the minimum necessities of life or of a minimally accepted standard of living. Such norms and standards do not necessarily relate only to income or to wealth but also to other aspects of the quality of human existence. In fact, a distinction has come to be made between income poverty and other socio-economic deprivations.

Various standards have been developed against which to measure absolute poverty. These standards are subjective and questionable as to how effective they are when representing the minimum standards for human survival.
An aggregate measure of the distribution of poverty is measured by poverty head counts. Its depth as measured by deficiency per household beneath the accepted minimum standard, is reflective by the so-called poverty gap. It is the aggregate deficiency in income of communities below the minimum living level.

[5]The Character of Poverty at www.nnp.co.za accessed on 2 September 2004

What causes poverty in South Africa?

There are a number of factors that cause poverty in South Africa.

An understanding of poverty in South Africa requires a thorough understanding of the historical and social legacies created by apartheid. South Africa is distinguishable in that its long history of racial discrimination impacted on the living conditions of South Africans.

In South Africa a leading cause of poverty stems back to the system of apartheid that dictated that the control of societies' wealth was in the hands of a few, while the majority of the population lived below acceptable living conditions. The colonial and apartheid policies of forced removals, expropriation, discriminatory property laws and provision of inferior education to black people produced an extraordinary concentration of financial, land and physical capital in the hands of a small white segment of the population.

It is recorded that in 1998, black people owned only 2% of the country's economic wealth[6]. Although our economy is not predominantly agricultural, inequality in land ownership is clearly linked to poverty.

The following factors are main causes of poverty in South Africa

- Unemployment
- Lack of education
- The HIV/AIDS epidemic
- The rising rural population
- Crime

Unemployment

During the past ten years many studies have examined the extent of poverty and inequality in South Africa, as well as their links to the labour market, growth and access to services. One of the underlying factors of poverty is unemployment. The current official unemployment rate is estimated to be 28.2%[7].

Very large differences emerge as a result of race and gender when dealing with unemployment. Unemployment remains highest for Africans, especially women. Fewer women are "economically active" that is, fewer have employment or are looking for it. Unemployment for Africans runs at 38%, compared to 14% for others. Only half of women are economically active, compared to two thirds for men. Unemployment for women runs at 45%, compared to 31% for men. Over half of African women in the labour force are unemployed.[8]

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[6] SAIRR (1198: 158): Business Day, 10 February 1998
[7] Labour Force Survey Key Findings at http://www.statssa.gov.za/keyindicators/lfs.asp accessed on 1 September 2004
[8] Secretarial Report to the 7th National Congress at http://www.cosatu.org.za/congress/cong2000/secr-s-e.htm accessed on 1 September 2004

Informal sector employment and self-employment exist as alternatives to formal sector employment but in general they are less remunerative and offer a lower standard of living than formal sector employment. While informal employment and self-employment may prevent destitution, it is certainly no guarantee against poverty. The rise in economic inequality within the South African society is on the one hand driven by rising employment of well-paid, highly skilled persons and, on the other hand declining employment of lower paid, less skilled persons who are forced into poorly remunerated informal sector employment or into unemployment. This divide between skilled and unskilled labour is mainly a result of lack of education.

Lack of education

Another major cause of poverty in South Africa is the lack of education. Education is pivotal to economic prosperity, assisting South Africans – personally and collectively. To escape the "poverty trap" characterises many of the South African communities. Over fifty percent of the South African population is female, and a majority of this group has had little or no formal education. It is for this reason that a larger percentage of women are considered poor.
There is a very strong correlation between level of education and standard of living. The poverty rate of people with no education is 69%, compared with 54% for people with primary education, 24% for those with secondary education, and 3% for those with tertiary education.

The HIV/AIDS epidemic

The HIV/AIDS epidemic is another threat to the social fabric and economy of South Africa. Infection in the labour force is expected to increase to 25% by 2005. It is also estimated that 96% of HIV positive individuals are within the working age population of 15 – 65. The impact of AIDS will have far-reaching consequences for the South African economy in the next decade, with detrimental effects on labour productivity and economic growth.

HIV/AIDS aggravates the problem of poverty primarily through:

- Disruption of the family income base through death of one or more contributors/breadwinners.
- The creation of orphans, many themselves infected with the disease, who will become a burden upon the extended family and, in the absence of care givers, become the responsibility of the State.
- The erosion of the productivity of the labour force and the effective increase in the cost of labour at a time of globalisation and liberalisation of markets when labour's main imperative is to become more competitive.
- Increasing pressure on health and welfare systems, requiring the diversion of resources toward health spending at the cost of economic growth, sustained job creation and improvement in the per capita gross national income.

The rising rural population

In South Africa the rising rural population and declining capacity of the land and natural resources aggravates poverty. Rapid population growth has given rise to the following proximate causes of extreme rural poverty:

- Landlessness - Degradation of the environment to a point where its capacity to support the community has been seriously compromised.

- Migration- particularly of economically active males, to the metropolitan areas and the further disruption of the fabric of the family and the local production economy as economically active females also start to migrate.

- High dependency of the economically inactive upon the economically active -Recourse to an informal sector that is overcrowded in the race of declining local markets, with consequent declining returns.

The incapacity of government to provide urban infrastructure and acceptable living space at a sufficient rate, coupled with inadequate economic performance to provide jobs for the rising urban and peri-urban population inevitably leads to:

- The establishment of informal settlements as first-level entry points to urban subsistence for the extremely poor. The density of settlement, however, frequently precludes the application of traditional rural survival strategies for households (subsistence gardening, keeping of livestock, etc) who are under pressure to turn to other means to survive.
- Dysfunctional community life for the extremely poor and the loss of elements of "social capital" such as traditional ties and support relationships.

Crime

Crime is a cause, an aggravator and a result of poverty. Corruption and inefficiency are aggravators that serve to divert resources destined for the poor away from their original purpose or, in the case of inefficiency, that result in the wastage of resources. Particularly regarding corruption in public administrations and enterprises, the poor neither have the resources nor have they the "connections" to induce the attention of corrupt officials. The frequently precarious circumstances of survival of the poor render them particularly vulnerable.

Extreme poverty is associated with degrees of erosion of social solidarity and cohesion, i.e. "social capital". The poor are vulnerable and often have no "voice". As a result they are soft targets for violence and various forms of extortion. The physical and social circumstances, in which the extremely poor have to survive, serve as aggravators of their condition of poverty.

Powerlessness and insecurity on the part of the poor are the result of attitudes and approaches which seek to marginalise the problems of poverty. In reality the poor are not excluded from society itself, but essentially from contributing to and benefiting from the common good of society. Approaches that consign the poor to the role of indigent beneficiaries and perpetual dependants

upon society as part of the problem and not themselves as part of a solution within an inclusive approach aggravate the sense of precariousness and insecurity of the poor.

Relative deprivation has to do with the deprivation of individuals relative to others in the society in which they function. When measuring relative deprivation or inequality, the distribution of income, wealth and benefit within the society and community is considered. The tests used to measure relative deprivation or inequality in South Africa are summarised in Table 2 below.

In a country such as South Africa the emerging view of the roots, causes and manifestations of poverty require that additional connections be made between economic opportunity, social progress and human rights. The measurement of progress in addressing poverty in its broadest sense thus requires an analysis of concrete and verifiable measures to ensure that deprivation and discrimination, two features of South Africa's recent past, are addressed.

The challenge in tracking the transformation of our society is to go beyond measuring the aggregate well being of individuals and to measure, in addition, changes in institutional and structural conditions.

Poverty and statistics in South Africa

A recent report for South Africa concluded that the proportion of people in poverty in terms of a South African poverty line has declined (from 51,1% in 1995 to 48,5% in 2002) but that the absolute number in poverty has increased from 20,2 million in 1995 to 21,9 million in 2002. The report also argues that the proportion of the population with living less than $1 per day has increased from 9,4% in 1995 to 10,5% in 2002. In broad terms there seems to be agreement on the groups of people most vulnerable to poverty.

Quantitative analyses of the extent of poverty in South Africa more or less agree that the poverty rate (percentage of individuals classified as poor) generally varies between about 40% and 50%. Provincial, population group, gender and urban-rural differentiation are also generally noted: The very poor particularly include African-headed, female-headed and rural households. In terms of the results of recent analyses of national datasets, and based on a poverty line of a monthly expenditure of R800 per household, an estimated 19 % of the population lives below the poverty line.

In broad terms there seems to be agreement on the groups of people most vulnerable to poverty - inhabitants of rural areas, women-headed households, the disabled, retrenched farm workers, the elderly, and, increasingly, those directly affected by HIV/AIDS. Poverty has a strong racial dimension, with a far greater proportion of Africans being poor.

In October 1999, there were an estimated 26.3 million people in South Africa who were aged between 15 and 65 – the cohort considered to be potentially economically active in any given population. Applying the expanded definition of unemployment, South Africa's rate of unemployment was 36 per cent. This was far higher for African females (52 per cent) than any other group. Comparing employment data from 1996 and 1999, the rate of unemployment increased from 34 per cent to 36 per cent. Furthermore, while the actual number of people employed during this time grew from 9.1 million to 10.0 million (an increase of 14 per cent), the

number of unemployed people also grew – by 26 per cent, from 4.7 million to 5.9 million. In 1999, 22 per cent of households reported that members were going hungry due to lack of money to buy food. Measured by household income, 83 per cent of households in the bottom fifth have no people in employment.

Looked at from another angle, 38 per cent of African households in 1999 contained no employed people – up from 32 per cent in 1996. Poverty has a spatial dimension: just less than half of the South African population lives in rural areas, as does 72 per cent of South Africa's poor. Poverty is also gendered: the poverty rate among female-headed households (60 per cent) is double that of male-headed households.

Question 1: Name 4 factors that cause poverty

Question 2: Name at least two ways in which poverty is measured

Question 3: What is absolute and relative poverty?

Question 4: What is the poverty rate in South Africa?

Question 5: What groups of people in South Africa are vulnerable to poverty?

Handout

Suggested responses to quiz on poverty

1. Name four factors that cause poverty

- The system of apartheid
- Unemployment
- Lack of education
- The HIV/AIDS epidemic
- The rising rural population
- Crime

2. Name at least two ways in which poverty is measured

- absolute poverty; and
- relative poverty.

3. What is absolute and relative poverty?

- Absolute poverty (extreme poverty) is synonymous with extreme want or deprivation. Absolute poverty has to do with the deprivation of individuals relative to some absolute and predetermined norm(s) and standard(s) taken by any society as a suitable measure of the minimum necessities of life or of a minimally accepted standard of living.
- ♦ Relative deprivation has to do with the deprivation of individuals relative to others in the society in which they function. When measuring relative deprivation or inequality, the distribution of income, wealth and benefit within the society and community is considered

4. What is the poverty rate in South Africa?

A recent report for South Africa concluded that the proportion of people in poverty in terms of a South African poverty line has declined (from 51,1% in 1995 to 48,5% in 2002) but that the absolute number in poverty has increased from 20,2 million in 1995 to 21,9 million in 2002.

5. What groups of people in South Africa are vulnerable to poverty?

In broad terms there seems to be agreement on the groups of people most vulnerable to poverty - inhabitants of rural areas, women-headed households, the disabled, retrenched farm workers, the elderly, and, increasingly, those directly affected by HIV/AIDS. Poverty has a strong racial dimension, with a far greater proportion of Africans being poor.

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Poverty, race and gender

Individually, and then in groups, read the information below and then answer the questions allocated to your group by the facilitator

How does race impact on poverty?

In the 1998 parliamentary debate on reconciliation and nation-building, then deputy president Thabo Mbeki famously argued that South Africa comprised two 'nations' divided by poverty:

> "One of these nations is white, relatively prosperous, regardless of gender or geographic dispersal. It has ready access to a developed economic, physical, educational, communication and other infrastructure … The second and larger nation of South Africa is black and poor, with the worst affected being women in the rural areas, the black rural population in general and the disabled. This nation lives under conditions of a grossly underdeveloped economic, physical, educational, communication and other infrastructure. It has virtually no possibility to exercise what in reality amounts to a theoretical right to equal opportunity".

Poverty is a fundamental problem of contemporary societies. The problem of poverty in South Africa is situated within the social structures and institutions of the South African apartheid past. Poverty in South Africa has racial, gender and spatial dimensions, a direct result of the policies of the successive colonial, segregationist and apartheid regimes. There is a very strong correlation between race and poverty. Although, poverty is not confined to any one-race group, but is concentrated among blacks, particularly Africans.

In recent years however, inequality has been 'changing from being race to class based' as a rich black elite has emerged and whites have become proportionately less wealthy. It has been submitted that only a small proportion of black South Africans is benefiting significantly from the post-apartheid economic dispensation.

Poverty and gender

Is poverty gender-biased?

Worldwide 1.3 billion people are living in extreme poverty. Most of them are women. The International community has come to realise in recent years that political, economic and cultural discrimination against women constitutes a central obstacle to social development.

Poverty is not gender-neutral. But economic inequality and a rise in absolute poverty among women in South Africa are not merely situations bound up with issues of poor income, they are also caused by insufficient access to resources, a lack social options, and greater vulnerability to abuse and in recent years the plague of HIV/AIDS.

Recent years have seen a disproportionate rise in HIV infection among women, the majority of all infected adults in sub-Saharan Africa are women. This can be attributed to their restricted rights of self-determination.

Challenges within the gender and poverty nexus concern the ideas of access to resources, decision-making, and control. Lack of power and influence on social decision-making processes is an elementary component of an extended definition of poverty.

Although women's status has improved in South Africa over the last decade, gender disparities still persist and remains most acute in the rural area and among black women. Gender inequalities impose large costs on the well-being and health of the poor, diminishing their productivity and potential to reduce poverty and ensure economic growth. Women have more limited opportunities to enjoy rights, express needs, improve economic conditions and access services than do men. Although women and men share many of the burdens of poverty, they frequently experience poverty differently, have different poverty reduction priorities and are affected differently by development interventions. Usually women and girls bear the brunt of gender inequalities.

Why are women more susceptible to poverty?

To comprehensively understand why women are more at risk of facing poverty, the following factors need to be carefully considered:

- Women head the poorest households in South Africa.
- Women have less access to land and agriculture. Black South Africans have even less access but within that allocation, women have far less.
- Women have less access to jobs and in most cases have little or no skills to secure employment.
- There is a huge problem of HIV/AIDS and South African women are more vulnerable to it. Poverty increases the chances of contracting the disease. There is a relationship between HIV/AIDS, gender and poverty.
- The majority of victims of domestic violence are women and poverty increases the chances of violence and increases the inability to escape violence.
- Gender division of labour in households, results in women taking up unpaid positions as homemakers, while most men find paid employment outside the home. This means that most women being left economically powerless.
- Patriarchy (male dominated society structure) and cultural structures may relegate women to positions of subservience.

Historical reasons

Poverty is also as a result of colonial and postcolonial domination and unjust treatment of developing countries. Black women make up the overwhelming majority of the poor, unemployed and unskilled. Schools of thought that blame poverty on over population tend to ignore the deeper

structural problems in the economy related to a history of racial oppression and exploitation. Apartheid's economic exploitation and segregation systematically resulted in much higher levels of poverty for black South Africans and women in particular.

A dramatic increase in the number of 'non-intact' families (biological father absent, non-biological father present or absent, or simply single-headed households) and female-headed households has been reported. This phenomenon has been associated with an increase in the number of children living in poverty. For historical reasons, poverty tends to be more pronounced among single-headed African-American households[9]. One could argue that given the historical similarities, the same holds for African women in South Africa[10]. South Africa's past is tainted with aspects of migrant labour, which resulted in the collapse of family and social values. Migrant labour also resulted in men leaving women to tend to the fields and family while they sought work at the mines, this strengthened the perception that women are to be house bound and resulted in them being unskilled with little or no education.

A discussion of South Africa's past of injustices is not complete without reference to the still contentious issue of land and its ownership. Apartheid dictated that the ownership of land was to be concentrated in the hands of the white minority. In South Africa women are generally disadvantaged compared to men of the same race and class in their access to land. Women gaining land in their own right appears in many traditional African societies as an exception rather than the rule.

Both women and men's claims to resources, power and authority are fashioned principally through intersections between race, class and gender. These interconnections are located and deployed within specific cultural and historical contexts.

Traditional practices

The system of succession and inheritance for black South Africans is patrilineal. Primogeniture is the governing principle and the universal practice of polygamy is fundamental. Central to the principle of primogeniture is the postulation that only males can inherit. Widows were therefore, until recently denied benefiting from their deceased husbands' estates.

Although recent legal cases[11] have seen a complete overall of the customary law of primogeniture, many of the traditional practices that relegated women to positions of subservience still remain part of the majority of African families. It is important to acknowledge that the perception that customary law was oppressive to women is not always accurate. However, it is true to say that as a result of the manipulation of cultural practices, African women are often assigned to positions of subservience, and remain unempowered and oppressed.

Social reasons

Socio-economic conditions of people provide useful indicators of who is more susceptible to being infected by HIV, and for categorising people who are at risk. For instance, women are more likely to be infected than men. Poor people can be more susceptible than wealthy people, but much

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[9] Mintz, 1998

[10] Being a Man In South Africa at http://www.childrenfirst.org.za/shownews?mode=content&id=22218&refto=4323 accessed on 2 September 2004

[11] Bhe v Khayelitshi 2004 (1) BCLR 27 (C)

depends on the social relations between people. A woman who lives in poverty but who has a job and is not dependent on a man for income may have a lower chance of being infected than a woman living in poverty who is financially dependent on a man.

Social security represents a significant proportion of government expenditure, and as such requires good administration, careful management, and strict control. It is estimated that fraud, theft and inefficiencies in South Africa's social security system is absorbing 10 per cent of the R11 billion welfare budget.

The problems being experienced in the social security system are largely related to the system itself. Fraud and corruption, for instance, is largely the result of weaknesses in the existing management and administrative systems. It is therefore not possible to address these factors in isolation; it has to be done in the context of the total restructuring of the system of social security[12].

The relationship between poverty, gender and gender based violence[13]

Violence against women and poverty go hand in hand. Unfortunately a high proportion of all women in South Africa suffer an inordinate number of beatings, rape and emotional abuse. However, being poor increases that risk of exposure to violence enormously.

There is growing evidence that living in impoverished conditions increases a woman's risk to all types of violence. Murder rates worldwide, as an example, are found to be highest in areas where poverty is the most prevalent. This is not to say that there is always a direct relationship between poverty and violence - but poverty is an important factor that needs to be considered when trying to understand the rates and distribution of violence against women.

Women's vulnerability derives not only from the threat of direct violence. They have been the historic victims of political and economic exclusion and have suffered the ravages of patriarchy, sexism and discriminatory practices that have kept them outside of social, political and economic power structures. In addition, socio-cultural conditioning has resulted in the fact that women and girls are often prepared for marriage and child-rearing but not for the job market.

This economic vulnerability limits their chances to change their situation when confronted with violence. Poverty-stricken women, and particularly those in rural areas, are often financially dependent, have limited access to employment and are unsupported mothers who must fulfil the role of caregiver. As a result they have few alternatives and options if they wish to leave a violent situation or community. In most impoverished areas in South Africa, women have limited access to health, education, social, psychological and legal services.

The result is that there is evidence to show that African women, who are undoubtedly the poorest sector of our society, are more likely to experience an incidence of violence compared to their white counterparts. Recent South African police statistics also show that levels of rape are often highest in provinces which are economically less developed.

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[12] Poverty and Corruption: The case of Social Security at http://www.iss.co.za/Pubs/Monographs/No15/Section3.html accessed on 2 September 2004

[13] A Triad of Oppressin on Violence, women and poverty at http://www.csvr.org.za/articles/artgend.htm accessed on 2 September 2004

The reasons for this relationship between violence against women and poverty are numerous, apartheid's economic exploitation and segregation systematically resulted in much higher levels of poverty for black South Africans and women in particular. A range of factors have contributed to high levels of violence against women in poor areas. These factors include transience of the population, over-crowding, disrupted family life, dependency and the socialised acceptance of violence as a way to solve problems.

It is thus imperative that programmes designed to eradicate poverty and reduce violence against women address the many social and economic complexities that contribute to the magnitude of oppression that poor women face. While there is a need for broad national policies and campaigns, local programmes targeted to the specific needs of diverse communities are essential. As the needs of rural and urban communities in each province will differ, so too will the approach needed to combat violence and poverty vary in each community. Above all what is needed is a gender focused development strategy which takes into consideration the unique needs of poor women.

Poverty reduction strategies

A gendered approach to poverty reduction would concentrate on the economic development and empowerment of poor women. It would provide resource generating opportunities that are easily accessible and conducive to a woman's needs and, if necessary, her schedule as a caregiver. In rural areas, it is crucial that indigenous women be given access to the ownership of land. Programmes should provide financial assistance and credit at accommodating interest rates and convenient terms of repayment so as to increase a woman's opportunity to engage in small scale business activities. Programmes must provide education and employment training that builds the capacity of women to become economically independent and thus enables them to alter situations of violence.

Functional literacy programmes are a crucial step in empowering women to take control of their own lives.

It is also necessary when designing poverty eradication programmes to address the social and public health depravation of poor communities. Free and accessible health services for women and children must be provided. Services such as shelters for abused women, counselling services and legal resources are essential if women suffering from violence are to be empowered to transform their situation.

As demonstrated, violence against women is a multi-dimensional issue. Despite the complexities, or perhaps because of them, it is important that there be a national learning process against such violence. The problem calls for a campaign on human rights that promotes a culture of tolerance, that cultivates respect for women's economic and social contributions and that advocates for women's safety and ultimately their lives.

There is much to be done in the fight against violence and poverty and the effect these have on women. However, we owe it to those women who suffer from the double oppression of poverty and violence to help them to transform conditions of dependence and hopelessness to those of empowerment and progress.

Question 1: How does race impact poverty?

Question 2: Why are women more susceptible to poverty?

Question 3: How have traditional practices influenced women's poverty?.

Question 4: What are the socio-economic conditions that cause poverty among women?

Question 5: Does economic vulnerability play a role in the violence against women?

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Hand out

Suggested responses to exercise on poverty and race and gender

1. How does race impact poverty?

Poverty is a fundamental problem of contemporary societies. The problem of poverty in South Africa is situated within the social structures and institutions of the South African apartheid past. Poverty in South Africa has racial, gender and spatial dimensions, a direct result of the policies of the successive colonial, segregationist and apartheid regimes. There is a very strong correlation between race and poverty. Although, poverty is not confined to any one-race group, but is concentrated among blacks, particularly Africans.

2. Why are women more susceptible to poverty?

- Women head the poorest households in South Africa.
- Women have less access to land and agriculture. Black South Africans have even less access but within that allocation, women have far less.
- Women have less access to jobs. And in most cases have little or no skills to secure employment.
- There is a huge problem of HIV/AIDS and South African women are more vulnerable to it. Poverty increases the chances of contracting the disease. There is a relationship between HIV/AIDS, gender and poverty.
- The majority of victims of domestic violence are women and poverty increases the chances of violence and increases the inability to escape violence.
- Gender division of labour in households, results in women taking up unpaid positions as homemakers, while most men find paid employment outside the home. This means that most women being left economically powerless.
- Patriarchy (male dominated society structure) and cultural structures may relegate women to positions of subservience.

3. How have traditional practices influences womens' poverty?

The Native system of succession and inheritance is invariably patrilineal. Primogeniture is the governing principle and the universal practice of polygamy is fundamental. Central to the principle of primogeniture is the postulation that only males can inherit. Widows were therefore, until recently denied benefiting from their deceased husbands' estates.

4. What are the socio-economic conditions that cause poverty among women?

Socio-economic conditions of people provide useful indicators of who is more susceptible to being infected by HIV, and for categorising people who are at risk. For instance, women are more likely to be infected than men.

5. Does economic vulnerability play a role in the violence against women?

Economic vulnerability limits women's chances to change their situation when confronted with violence. Poverty-stricken women, and particularly those in rural areas, are often financially dependent, have limited access to employment and are unsupported mothers who must fulfil the role of caregiver. As a result they have few alternatives and options if they wish to leave a violent situation or community. In most impoverished areas in South Africa, women have limited access to health, education, social, psychological and legal services.

The result is that there is evidence to show that African women, who are undoubtedly the poorest sector of our society, are more likely to experience an incidence of violence compared to their white counterparts. Recent South African police statistics also show that levels of rape are often highest in provinces which are economically less developed.

Section 3

The legal and policy framework

At the end of this section you will be able to:

- Identify the international instruments which promote the advancement of women and the eradication of poverty amongst women
- Identify the regional instruments which promote the advancement of women and the eradication of poverty amongst women
- Describe relevant laws in South Africa which the advancement of women and the eradication of poverty amongst women

Worksheet

International instruments which promote the advancement of women and the eradication of poverty amongst women

Individually and then in small groups, read the document on international instruments below and then record your responses to the questions which follow.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),

- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women.

- CEDAW is perhaps one of the more important Conventions on women signed by the South African Government. It is by far one of the most comprehensive Conventions on women's rights and focuses on the institutions, systems and ideologies within a society that deny women rights. It also recognises the role of culture and stereotyping in the gendering of society and encourages the inclusion of equality into several spheres of women's lives including the law, family life, culture and religion.

- The Convention defines discrimination against women as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

- The Convention is the only human rights treaty that affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations. It affirms women's rights to acquire, change or retain their nationality and the nationality of their children. States parties also agree to take appropriate measures against all forms of traffic in women and exploitation of women.

- CEDAW provides a comprehensive framework for challenging the various forces that have created and sustained gender discrimination. As at 26 March 2004, 177 states were party to the convention. South Africa signed and became party to the convention on 29 January 1993.

Beijing Platform for Action

- South Africa participated fully in the United Nations initiative in Beijing, in September 1995. It addressed as one of the critical areas of concern the need for the advancement of women and the achievement of equality between women and men as a matter of human rights and a condition for social justice.
- The Beijing conference was a follow up to the Nairobi Forward-looking Strategies for the Advancement of Women, where it had been decided that there was a need for women's active participation in all spheres of public and private life through a full and equal share in economic, social, cultural and political decision-making.[14] Governments' concerned where encouraged to take active participation in order to advance and empower women. Under the Ministry of Justice, specific commitments in regard to the implementation of the Beijing Platform for Action included the need to combat discrimination and inequality, and the recognition of customary and religious marriages[15]"
- The conference acknowledged that there have been important changes in the relationships between women and men, especially where there have been major advances in education for women and significant increases in their participation in the paid labour force. The boundaries of the gender division of labour between productive and reproductive roles are gradually being crossed as women have started to enter formerly male-dominated areas of work and men have started to accept greater responsibility for domestic tasks, including child care. However, changes in women's roles have been greater and much more rapid than changes in men's roles. In many countries, the differences between women's and men's achievements and activities are still not recognised as the consequences of socially constructed gender roles rather than immutable biological differences.

- Many women face particular barriers because of various diverse factors in addition to their gender. Often these diverse factors isolate or marginalise such women. They are, inter alia, denied their human rights, they lack access or are denied access to education and vocational training, employment, housing and economic self-sufficiency and they are excluded from decision-making processes. Such women are often denied the opportunity to contribute to their communities as part of the mainstream.

- The conference therefore, called upon all governments to take strategic action in the following areas of concern:

    - The persistent and increasing burden of poverty on women

    - Inequalities and inadequacies in and unequal access to education and training

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[13] Fourth World Conference on Women Platform for Action mission statement at www.un.org/womenwatch/dow/beijing/platform/plat1.htm accessed on 26 September 2003.
[15] *Ibid*

- Inequalities and inadequacies in and unequal access to health care and related services
- Violence against women
- Inequality in economic structures and policies, in all forms of productive activities and in access to resources
- Inequality between men and women in the sharing of power and decision-making at all levels
- Insufficient mechanisms at all levels to promote the advancement of women
- Lack of respect for and inadequate promotion and protection of the human rights of women
- Stereotyping of women and inequality in women's access to and participation in all communication systems, especially in the media
- Gender inequalities in the management of natural resources and in the safeguarding of the environment
- Persistent discrimination against and violation of the rights of the girl child

General Recommendations 19 on Violence Against Women

Article 6 provides:

1. States parties are required by article 6 to take measures to suppress all forms of traffic in women and exploitation of the prostitution of women.

2. Poverty and unemployment increase opportunities for trafficking in women. In addition to established forms of trafficking there are new forms of sexual exploitation, such as sex tourism, the recruitment of domestic labour from developing countries to work in developed countries, and organised marriages between women from developing countries and foreign nationals. These practices are incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity. They put women at special risk of violence and abuse.

3. Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalise them. They need the equal protection of laws against rape and other forms of violence.

Question 1: When was the Convention on the Elimination of all Forms of Discrimination against Women adopted by the United Nations General Assembly?

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Question 2: When did South Africa become a party to the Convention?

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Question 3: What does the Convention requires state parties to do in order to ensure that women are on equal terms to men?

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Question 4: When and where was the United Nations 4th World Conference on Women held?

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Question 5: List 5 steps that the Beijing Platform of Action called upon governments to take.

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Handout

Suggested answers to worksheet on international instruments

Questions	Suggested answers
1 When was the Convention on the Elimination of all Forms of Discrimination against Women adopted by the United Nations General Assembly?	The Convention was adopted in 1979 and is often described as an International Bill of Rights for Women.
2 When did South Africa become a party to the Convention?	South Africa signed and became party to the Convention on 29 January 1993. As at 26 March 2004, 177 States were party to the Convention.
3 What does the Convention requires state parties to do in order to ensure that women are on equal terms to men.?	Article 7 requires the State parties to the Convention to take all appropriate measures to eliminate discrimination against women in the political and public life of their countries and, in particular, to ensure to women on equal terms with men, the rights- • to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; • to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; • to participate in non-governmental organisations and associations concerned with the public and political life of the country.

4	When and where was the United Nations 4th World Conference on Women held?	The United Nations 4th World Conference on Women was held in Beijing in September 1995. Its platform for action is known as the Beijing Platform for Action.
5	List 5 steps that the Beijing Platform for Action called upon governments to take.	The Platform for Action called on governments- • to commit themselves to establishing the goal of gender balance in governmental bodies and committees, as well as in public administrative entities, and in the judiciary, including setting specific targets and implementing measures to substantially increase the number of women with a view to achieving equal representation of women and men, if necessary through positive action; • to ensure that responsibility for the advancement of women is vested in the highest possible level of government and that national machineries for their advancement are created or strengthened at the highest possible level of government; • to seek to ensure that before policy decisions are taken, an analysis of their impact on women and men respectively, is carried out; • to work with members of legislative bodies to promote a gender perspective in all legislation and policies; and • to give all ministries the mandate to review policies and programmes from a gender perspective and in the light of the Platform of Action.

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Regional instruments promoting the participation of women in governance

☞ Individually, and then in groups, read the information below and then answer the questions allocated to your group

- Women's rights have been recognised and guaranteed in all international and regional human rights instruments, notably the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All, the African Charter on Human and People's Rights and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.

The African Charter on Human and People's Rights

- The African Charter to which South Africa is a signatory recognises the struggle of peoples for their dignity and genuine independence… and undertakes to eliminate colonialism, neo-colonialism, apartheid and to dismantle … all forms of discrimination, particularly those based on race, ethnic group, colour, sex, language, religion or political opinions.

- Article 18 (3) provides:

  The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.

- Article 16 provides:

  1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.

2. States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

- Article 17 (1) provides:

1. Every individual shall have the right to education.

Protocol to the African Charter on Human and People's Rights

- "Violence against women" is defined as:

> "all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war".

- Article 19 provides that:

> Women shall have the right to fully enjoy their right to sustainable development. In this connection, the States Parties shall take all appropriate measures to:
>
> a) introduce the gender perspective in the national development planning procedures;
>
> b) ensure participation of women at all levels in the conceptualisation, decision-making, implementation and evaluation of development policies and programmes;
>
> c) promote women's access to and control over productive resources such as land and guarantee their right to property;
>
> d) promote women's access to credit, training, skills development and extension services at rural and urban levels in order to provide women with a higher quality of life and reduce the level of poverty among women;
>
> e) take into account indicators of human development specifically relating to women in the elaboration of development policies and programmes; and
>
> f) ensure that the negative effects of globalisation and any adverse effects of the implementation of trade and economic policies and programmes are reduced to the minimum for women.

The Declaration of the Sixth African Regional Conference on Women

- The Sixth African regional Conference on Women addressed the following issues concerning women:

  - Deepening poverty, namely feminised poverty, affects increasing numbers of women, particularly rural women.

- The systematic under-representation of women in decision-making and leadership positions persists, despite the gains made.

Inadequate access by women and girls to education and information, leaves them continuously deprived of any meaningful personal development, lagging far behind the scientific and technological advances that characterise the end of the twentieth century. As a result, scores of African women will enter the third millennium in a state of almost total deprivation and marginalization.

Question 1: Which articles in the African Charter on Human & Peoples Rights deal with the socio-economic rights of women?

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Question 2: How is violence against women defined in the Protocol to the Africa Charter on Human and Peoples Rights?

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Question 3: What issues were addressed at the 6th African Regional Conference on Women?

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Suggested answers to worksheet on regional instruments

Questions	Suggested answers
1 Which articles in the African Charter on Human & Peoples Rights deal with the socio-economic rights of women?	The relevant articles in the the African Charter on Human & Peoples are as follows: • Article 18 (3) provides: The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions. • Article 16 provides: 3. Every individual shall have the right to enjoy the best attainable state of physical and mental health. 4. States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick. • Article 17 (1) provides: (2) Every individual shall have the right to education.

2	**How is violence against women defined in the Protocol to the Africa Charter on Human and Peoples Rights?**	• Violence against women defined in the Protocol to the Africa Charter on Human and Peoples Rights" is defined as: "all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war".
3	**What issues were addressed at the 6th African Regional Conference on Women?**	• Deepening poverty, namely feminised poverty, affects increasing numbers of women, particularly rural women. • The systematic under-representation of women in decision-making and leadership positions persists, despite the gains made. • Inadequate access by women and girls to education and information, leaves them continuously deprived of any meaningful personal development, lagging far behind the scientific and technological advances that characterise the end of the twentieth century. As a result, scores of African women will enter the third millennium in a state of almost total deprivation and marginalization.

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South African legislation and case law

☞ **Individually and then in pairs, read the document on South African legislation and case law below and then record your responses to the questions which follow.**

The Constitution (Act 108 of 1996)

The South African Constitution, at its most narrow will protect traditional liberal rights to equality, personal liberty, property, free speech, assembly and association – the so called civil and political or "first generation" rights. However, the recognition that human rights and the basic social conditions of citizens are fundamentally interconnected have encouraged attempts to include less traditional rights in modern constitutions. The idea of socio-economic rights is that the state must be obliged to do whatever it can to secure for all members of society a basic set of social goods - education, health care, food, water, shelter, access to land and housing. There are a number of socio-economic rights in the Bill of Rights in the Constitution, section 26 and 27 are the most significant of these.

- Section 9 provides:

  (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

  (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

  (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

- Section 10 provides:

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

Property

Section 25 of the Constitution protects against arbitrary 'deprivation' of property and uncompensated 'expropriation' of property. Section 25(5) is a socio-economic right requiring the state to implement measures aimed at achieving land distribution. Section 25(6) read with section 25(9) imposes an obligation on the state to enact legislation relating to land redistribution and reform. According to section 25(8) the constitutional protection of property may not impede the states ability to effect land and water law reforms in order to achieve socio-economic equity.

Section 25 of the Constitution provides that:

(1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

(2) Property may be expropriated only in terms of law of general application

a. for a public purpose or in the public interest; and

b. subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.

(3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including

a. the current use of the property;

b. the history of the acquisition and use of the property;

c. the market value of the property;

d. the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and

e. the purpose of the expropriation.

(4) For the purposes of this section

1. the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and

2. property is not limited to land.

(5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.

(6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

(7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.

(8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).

(9) Parliament must enact the legislation referred to in subsection

Access to adequate housing

- Section 26 provides:

  (1) Everyone has the right to have access to adequate housing.

  (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

  (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

- Section 26(1) provides a right to access to adequate housing. The word ‘access’ means that the state must create conditions for access to housing for people at all economic levels. Section 26(3) provides that no one maybe evicted from their homes, or have their home demolished, without a court order.

Health care, food, water and social security

- Section 27 provides:

(1) Everyone has the right to have access to

(a) health care services, including reproductive health care;

(b) sufficient food and water; and

(c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

(3) No one may be refused emergency medical treatment

- Section 27(1) provides for a right to access to 'health care services' and sufficient 'food' and 'water'. 'Health care services' are not defined but must include proper medical care, prevention and diagnosis of diseases and vaccination. 'Sufficient food and water' are components of an adequate standard of living, which has been linked to necessities of life 'in accordance with the prevailing cost and standards of living in the country concerned[16]'.

Education

- Section 29 provides:

(1) Everyone has the right-

(a) to a basic education, including adult basic education; and

(b) to further education, which the state, through reasonable measures, must make progressively available and accessible.

(2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, 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.

(3) Everyone has the right to establish and maintain, at their own expense, independent educational institutions that-

[16]De Waal, Currie and Erasmus "Bill of Rights Handbook", 4th edition pg. 448

(a) do not discriminate on the basis of race;

(b) are registered with the state; and

(c) maintain standards that are not inferior to standards at comparable public educational institutions.

(4) Subsection (3) does not preclude state subsidies for independent educational institutions.

The reconstruction and development programme (RDP) was designed to address the nexus between poverty and education:

> "No political democracy can survive and flourish if the mass of the people remain in poverty…A programme is required that is achievable, sustainable and meets the objectives of freedom and an improved standards of living and quality of life for all South Africans within a peaceful and stable society."

South Africans Schools Act 84 of 1996

The preamble of the Schools Act reads:

> "this country requires a new national system for schools which will redress past injustices in educational provision, provide an education of progressively high quality for all learners and in so doing lay a strong foundation for the development of all our people's talents and capabilities, advance the democratic transformation of society, combat racism and sexism and all other forms of unfair discrimination and intolerance, contribute to the eradication of poverty and the economic well-being of society, protect and advance our diverse cultures and languages, uphold the rights of all learners, parents and educators…"

Section 5(1) of the South Africa Schools Act provides that:

> *(1) A public school must admit learners and serve their educational requirements without unfairly discriminating in any way.*"

National Education Policy Act 27 of 1996

Section 4 provides:

The policy contemplated in section 3 shall be directed toward-

(a) the advancement and protection of the fundamental rights of every person guaranteed in terms of Chapter 2 of the Constitution, and in terms of international conventions ratified by Parliament, and in particular the right-

(i) of every person to be protected against unfair discrimination within or by an education department or education institution on any ground whatsoever;

(ii) of every person to basic education and equal access to education institutions;

(iii) of a parent or guardian in respect of the education of his or her child or ward;

(iv) of every child in respect of his or her education;

(v) of every student to be instructed in the language of his or her choice where this is reasonably practicable;

(vi) of every person to the freedoms of conscience, religion, thought, belief, opinion, expression and association within education institutions;

(vii) of every person to establish, where practicable, education institutions based on a common language, culture or religion, as long as there is no discrimination on the ground of race;

viii) of every person to use the language and participate in the cultural life of his or her choice within an education institution;

(b) enabling the education system to contribute to the full personal development of each student, and to the moral, social, cultural, political and economic development of the nation at large, including the advancement of democracy, human rights and the peaceful resolution of disputes;

(c) achieving equitable education opportunities and the redress of past inequality in education provision, including the promotion of gender equality and the advancement of the status of women;

(d) endeavouring to ensure that no person is denied the opportunity to receive an education to the maximum of his or her ability as a result of physical disability;

(e) providing opportunities for and encouraging lifelong learning;

(f) achieving an integrated approach to education and training within a national qualifications framework;

(g) cultivating skills, disciplines and capacities necessary for reconstruction and development;

(h) recognising the aptitudes, abilities, interests, prior knowledge and experience of students;

(i) encouraging independent and critical thought;

(j) promoting a culture of respect for teaching and learning in education institutions;

(k) promoting enquiry, research and the advancement of knowledge;

(l) enhancing the quality of education and educational innovation through systematic research and development on education, monitoring and evaluating education provision and performance, and training educators and education managers;

(m) ensuring broad public participation in the development of education policy and the representation of stakeholders in the governance of all aspects of the education system;

(n) achieving the cost-effective use of education resources and sustainable implementation of education services;

(o) achieving close co-operation between the national and provincial governments on matters relating to education, including the development of capacity in the departments of education, and the effective management of the national education system.

Higher Education Act

The Preamble of the Act provides for amongst other things:

- to redress past discrimination and ensure representivity and equal access;
- to restructure and transform programmes and institutions to respond better to the human resource, economic and development needs of the Republic;
- to provide optimal opportunities for learning and the creation of knowledge; and
- to promote the values which underlie an open and democratic society based on human dignity, equality and freedom;

Section 37(1) of the Act deals with admission of students at public higher education institutions. It provides that the admission policy of a public higher education institution must provide appropriate measures for the redress of past inequalities and may not unfairly discriminate in any way.

Further Education and Training Act 98 of 1998

The preamble provides for access to further education and training and the workplace by persons who have been marginalised in the past, such as women, the disabled and the disadvantaged.

Skills Development Act 97 of 1998

'Designated groups' means black people, women and people with disabilities.

The vision of government with regards to development of a skill strategy is that of an:

“integrated skills development system which promotes economic and employment growth and social development through a focus on education, training and employment services.”

Mineral and Petroleum Resources Development Act 28 of 2002

Section 2 of the Act deals with the objects of the Act and subsection (d) provides that:

The objects of this Act are to-

> "(d) substantially and meaningfully expand opportunities for historically disadvantaged persons, including women, to enter the mineral and petroleum industries and to benefit from the exploitation of the nation's mineral and petroleum resources."

Communal Land Rights Act, 2004

- section 2 provides:

  The objects of the Bill are mandated by section 25(5) and (6) of the Constitution.

  The Bill seeks to—

  (a) legally recognise and formalise the African traditional system of communally held land within the framework provided by the Constitution;

  (b) legally secure land tenure rights of communities and people (including women, the disabled and the youth) within the tenure system of their choice;

  (c) provide for the transfer and registration of communal land and rights in and to that land;

  (d) create a uniform national registration system for all tenure rights whether held individually or communally;

  (e) provide comparable redress where rights cannot be legally secured in situ;

  (f) provide for community rules which are aligned to the Constitution and for their registration;

  (g) provide for a systematic and democratic administration communal land in which traditional leaders and local and national government actively participate and support communities in the administration of their land and tenure rights;

  (h) extend the African peoples' access to land.

- Section 22 (3) and (4) provides:

  (3) At least one third of the total membership of a land administration committee must be women.

(4) One member of a land administration committee must represent the interests of vulnerable community members, including women, children and the youth, the elderly and the disabled.

The Act has been criticised by some sectors that it has not been conventionally considered from the perspective of gender. Yet, as land is considered paramount to survival in an agro based economy such as South Africa, it is important to address the injustice that resulted from the colonialists' dispossessing Africans of their land. Such measures were primarily based on race; but ultimately had an impact on the right to ownership by women. Women are generally disadvantaged, compared with men of the same race and class in access to land. The result is that in general women often find themselves insecure in their rights of access to land. Access often largely depends on their link to a man and married women are placed in even a greater dilemma as they are often forced to remain in unfavourable marriages to secure the income and resources that come with land control and ownership.

As with the struggle to obtain any of the other Constitutional rights, rural black women find themselves consigned to inferior positions, while men hold the exclusive power to "use and control the profits on all land."[17] It is women who are often in the first line of attack when housing, land and basic needs are threatened, and in these instances women mobilise themselves across the community, yet as Small and Kempe[18] have observed, it is the very same community political structures that prevent active involvement by women in decision making. The existence of married women's right to land depended on consent to such an arrangement, or on the "altruistic" nature of the male heir to the land. Either way, the woman was dependent on someone else.

An awareness of the difficulties women experience in relation to land has led to implementation of policy decisions implemented first within the ANC framework and in government.[19] Shamim Meer lists them as follows:

> that women must participate in decision-making structures from local to national level;
>
> that women's demands must be taken up so that their priorities get addressed in community and national decision making forums; and
>
> that women must be organised and empowered at community level.

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[17] Alexander op *cit* at 61.

[18] Referred to with approval by S. Meer "Introduction" in Meer (ed) *Women, Land and Authority: Perspectives from South Africa*, 1997:4.

[19] This same commitment to an equitable land policy is reflected in both the Green Paper on South African Land Policy, 1996 and the White Paper on South African Land Policy, April 1997. In this the vision of the Department of Land Affairs includes among others the acknowledgement that traditional communal land tenure systems are discriminatory to women and the need to break down these systems. It includes as one of its four basic objectives the need to "ensure that all reforms reflect the values of basic human rights and equality as required by the Constitution." D.L Carey Miller, 2000:459. M. Robertson "Land and Post-Apartheid Reconstruction in South Africa"in Bright and Dewar (eds) *Land Law: Themes and Perspectives*, 1998 quotes from the preamble to the R.D.P which among its many objectives was the need to encourage "the profound transformation of all levels of government and society", by giving equal opportunity to women in land access. The R.D.P was replaced by the Growth, Employment and Redistribution policy, better known as GEAR. See below for a discussion of how GEAR has affected African women.

Broad Based Black Economic Empowerment Act 53 of 2003 (BBBEE)

The BBBEE aims to promote the achievement of the constitutional right to equality, increase broad-based and effective participation of black people in the economy and promote a higher growth rate, increased employment and more equitable income distribution; and establish a national policy on broad-based black economic empowerment so as to promote the economic unity of the nation, protect the common market, and promote equal opportunity and equal access to government services

- The objectives of this Act are to:

  (a) promoting economic transformation in order to enable meaningful participation of black people in the economy.

  (b) achieving a substantial change in the racial composition of ownership and management structures and in the skilled occupations of existing and new enterprises.

  (c) increasing the extent to which communities, workers, co-operatives and other collective enterprises own and manage existing and new enterprises and increasing their access to economic activities, infrastructure and skills training.

  (d) increasing the extent to which black women own and manage existing and new enterprises, and increasing their access to economic activities, infrastructure and skills training.

  (e) promoting investment programmes that lead to broad-based and meaningful participation in the economy by black people in order to achieve sustainable development and general prosperity.

  (f) empowering rural and local communities by enabling access to economic activities, land, infrastructure, ownership and skills.

  (g) promoting access to finance for black economic empowerment.

The Domestic Violence Act 116 of 1998

- Defines ‘economic abuse' as:

  (a) the unreasonable deprivation of economic or financial resources to which a complainant is entitled under law or which the complainant requires out of necessity, including household necessities for the complainant, and mortgage bond repayments or payment of rent in respect of the shared residence.

  (b) the unreasonable disposal of household effects or other property in which the complainant has an interest.

The Employment Equity Act 55 of 1998 (EEA)

- The purpose of this Act is to achieve equity in the workplace by

  (a) promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and

  (b) implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational categories and levels in the workforce.

The EEA defines:

'designated groups' means black people, women and people with disabilities.

'reasonable accommodation' means any modification or adjustment to a job or to the working environment that will enable a person from a designated group to have access to or participate or advance in employment.

- Section 15 provides :

  (1) Affirmative action measures are measures designed to ensure that suitably qualified people from designated groups have equal employment opportunities and are equitably represented in all occupational categories and levels in the workforce of a designated employer.

  (2) Affirmative action measures implemented by a designated employer must include-

    (a) measures to identify and eliminate employment barriers, including unfair discrimination, which adversely affect people from designated groups;

    (b) measures designed to further diversity in the workplace based on equal dignity and respect of all people;

    (c) making reasonable accommodation for people from designated groups in order to ensure that they enjoy equal opportunities and are equitably represented in the workforce of a designated employer;

    (d) subject to subsection (3), measures to-

      (i) ensure the equitable representation of suitably qualified people from designated groups in all occupational categories and levels in the workforce; and

      (ii) retain and develop people from designated groups and to implement appropriate training measures, including measures in terms of an Act of Parliament providing for skills development.

  (3) The measures referred to in subsection (2) (d) include preferential treatment and numerical goals, but exclude quotas.

(4) Subject to section 42, nothing in this section requires a designated employer to take any decision concerning an employment policy or practice that would establish an absolute barrier to the prospective or continued employment or advancement of people who are not from designated groups.

- Section 42 provides:

In determining whether a designated employer is implementing employment equity in compliance with this Act, the Director-General or any person or body applying this Act must, in addition to the factors stated in section 15, take into account all of the following:

(a) The extent to which suitably qualified people from and amongst the different designated groups are equitably represented within each occupational category and level in that employer's workforce in relation to the-

(i) demographic profile of the national and regional economically active population;

(ii) pool of suitably qualified people from designated groups from which the employer may reasonably be expected to promote or appoint employees;

(iii) economic and financial factors relevant to the sector in which the employer operates;

(iv) present and anticipated economic and financial circumstances of the employer; and

(v) the number of present and planned vacancies that exist in the various categories and levels, and the employer's labour turnover;

(b) progress made in implementing employment equity by other designated employers operating under comparable circumstances and within the same sector;

(c) reasonable efforts made by a designated employer to implement its employment equity plan;

(d) the extent to which the designated employer has made progress in eliminating employment barriers that adversely affect people from designated groups; and

(e) any other prescribed factor.

Case law

The Constitutional court discussed the nature of socio-economic rights and the problem of their enforcement in the following cases:

Ex Parte chairperson of the Constitutional Assemble: In re: Certification of the Constitution of the Republic of South Africa[20]

The Constitutional Court conceded that the inclusion of socio-economic rights may result in Courts making orders which have direct implications for budgetary matters. However, even when a court enforces civil and political rights such as equality, freedom of speech and the right to a fair trial, the order it makes will often have such implications. A court may require the provision of legal aid, or the extension of State benefits to a class of people who formerly were not beneficiaries of such benefits. The courts view was that it cannot be said that by including socio-economic rights within a bill of rights, a task is conferred upon the Courts so different from that ordinarily conferred upon them by a bill of rights that it results in a breach of the separation of powers. Nevertheless, the court was of the view that these rights are, at least to some extent, justifiable.

The Government of the Republic of South Africa v Grootboom case[21]

The Constitutional Court in this case held that the phrase 'reasonable legislative and other measures' entails the following:

"The state is obliged to achieve the intended result, and the legislative measures will invariable have to be supported by appropriate, well directed policies and programmes implemented by the executive. The formulation of a programme is only the first stage in meeting the state's obligation. The programme must also be reasonable implemented. An otherwise reasonable programme that is not implemented reasonably will not constitute compliance with the state's obligation"

[20] 1996 (4) SA 744 (CC)
[21] 2001(1) SA 46 (CC)

Question 1: Which socio-economic rights are dealt with in the Constitution?

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Question 2: Which legislations have an impact on socio-economic rights?

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Question 3: Which rights in the Constitution are there to ensure that Government eradicates poverty?

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Question 4: Does section 25 of the Constitution require the State to provide property to all South African citizens?

Question 5: What is the objective of the Skills Development Act?

Question 6: What are women position in relation to land ownership?

Suggested answers to worksheet on South African legislation and case law

Handout

1 Which socio-economic rights are dealt with in the Constitution?	The idea of socio-economic rights is that the state must be obliged to do whatever it can to secure for all members of society a basic set of social goods - education, health care, food, water, shelter, access to land and housing. There are a number of socio-economic rights in the Bill of Rights in the Constitution, section 26 and 27 are the most significant of these.
2 Which legislations have an impact on socio-economic rights?	The Employment Equity Act 55 of 1998 (EEA) The Domestic Violence Act 116 of 1998 Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (Equality Act) Broad Based Black Economic Empowerment Act 53 of 2003 (BBBEE) Mineral and Petroleum Resources Development Act 28 of 2002 Further Education and Training Act 98 of 1998 Skills Development Act 97 of 1998 National Education Policy Act 27 of 1996 South Africans Schools Act 84 of 1996

3	**Which rights in the Constitution are there to ensure that Government eradicates poverty?**	The South African Constitution, at its most narrow will protect traditional liberal rights to equality, personal liberty, property, free speech, assembly and association – the so called civil and political or "first generation" rights. However, the recognition that human rights and the basic social conditions of citizens are fundamentally interconnected have encouraged attempts to include less traditional rights in modern constitutions. The idea of socio-economic rights is that the state must be obliged to do whatever it can to secure for all members of society a basic set of social goods - education, health care, food, water, shelter, access to land and housing. There are a number of socio-economic rights in the Bill of Rights in the Constitution, section 26 and 27 are the most significant of these
4	**Does section 25 of the Constitution require the State to provide property to all South AFrican citizens?**	Section 25 of the Constitution protects against arbitrary 'deprivation' of property and uncompensated 'expropriation' of property. Section 25(5) is a socio-economic right requiring the state to implement measures aimed at achieving land distribution. Section 25(6)read with s25(9) imposes an obligation on the state to enact legislation relating to land redistribution and reform. According to s25(8) the constitutional protection of property may not impede the states ability to effect land and water law reforms in order to achieve socio-economic equity.

5	**What is the objective of the Skills Development Act?**	The vision of government with regards to development of a skill strategy is that of an: > "integrated skills development system which promotes economic and employment growth and social development through a focus on education, training and employment services."
6	**What are women position in relation to land ownership?**	Women are generally disadvantaged, compared with men of the same race and class in access to land. The result is that in general women often find themselves insecure in their rights of access to land. Access often largely depends on their link to a man and married women are placed in even a greater dilemma as they are often forced to remain in unfavourable marriages to secure the income and resources that come with land control and ownership. As with the struggle to obtain any of the other Constitutional rights, rural black women find themselves consigned to inferior positions, while men hold the exclusive power to "use and control the profits on all land."[22] It is women who are often in the first line of attack when housing, land and basic needs are threatened

[22] Alexander op *cit* at 61.

Section 4

An introduction to the Equality Act

At the end of this section you will be able to:

- Describe the origin of the Equality Act
- Explain the right to equality in the Bill of rights
- Describe examples of the application of the right to equality
- Explain the limitations of rights

**Workshe
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An introduction to the Equality Act

☞ **Individually, and then in pairs, read the press cutting below and record your responses to the questions which follow:**

Sunday Times 22 February 2004:

"When my partner Marcus Pillay was refused entry to the Sliver Bar in Greenpoint last October, we knew immediately that his exclusion was racially motivated. What we didn't realise was just how tricky it would be to convince others of this fact.

We had stopped off for a drink on our way home from a dinner party when Marcus was blocked at the door of the swanky new establishment by two burly doormen, ostensibly because he was "inappropriately dressed".

Following a heated exchange, we were both punched, thrown to the ground and forced to leave.

Recounting these events the next day to friends and the media, the uncomfortable feeling that we were somehow tainted by what had happened lingered on.

Only later did Marcus put his feelings into perspective when he told me: "Although I knew that I was excluded because I am black, and although I knew this was both illegal and a moral outrage, I still somehow felt judged. A tiny voice whispered; "Maybe I really am not good enough to frequent this bar.""

This feeling was exacerbated by some acquaintances – sadly almost all white – who refused to accept that the incident was racially motivated. Surely, they said, there must be another reason for your exclusion. Weren't you drunk? And what was Marcus wearing?

I'm told that many black South Africans are familiar with this refusal to acknowledge racist incidents for what they are – even when the facts make it difficult to believe otherwise. I however, was taken by surprise.

Later I came to realise that this denial of racism is probably a defence mechanism. For many white people it must be shocking and uncomfortable to be confronted with evidence of racism by fellow

whites who seem rather decent and respectable – "just like us". If these people could act in a discriminatory way, then there is no reason why they themselves would not, given the opportunity, do the same or be suspected of doing the same.

While, surprisingly, there are still some people in this country who think they can get away with naked forms of racial discrimination, most black people (or women or gays and lesbians) fall victim to more subtle forms of discrimination. For example, clubs and bars will never admit that they are excluding black patrons because of their race, but will use vague and subjective criteria – such as "inappropriate dress", "attitude problem" or "class differences" – to deny patrons entry.

In such cases it is not easy to prove discrimination or to get a club or bar to change its policies. Because so many people in positions of power are in denial about discrimination, the victims often end up being blamed for being "too sensitive" or "paranoid".

Add to this the alienation of many ordinary people from the judicial system – going to court is usually an expensive and emotionally harrowing experience – and it becomes clear how difficult the quest for justice can be for the victims of discrimination.

This is exactly why Parliament adopted the Promotion of Equality and Prevention of Unfair Discrimination Act in 2000. The Act provides for the establishment of Equality Courts, which are unique in that they dispense with many of the legal formalities that ordinary people might find alienating and difficult to follow.

That is why Marcus decided to challenge the discriminatory practices of the Sliver Bar in the Equality Court. Without having to pay a lawyer exorbitant amounts of money, he could lodge a complaint with the court and would receive help to present the best possible case.

In terms of the Act, a person who complains about racial or any other form of discrimination does not have to prove that the institution or individual who discriminated against him, actually intended to do so. Only that the different treatment had the effect of causing harm.

It is then up to the accused to provide a justification for their actions. In Marcus' case, the owners of the bar would have had to prove that the clothes he was wearing were inferior to those of the white patrons allowed inside – something they evidently realised they would not be able to do.

It was particularly satisfying that in our case the court ordered the bar to change its entrance policy and in future to use only pre-announced and objective criteria to regulate admission to the premises. This case therefore sends a warning signal to other establishments that believe that they have an absolute right of admission. If such an establishment refuses entry to any black person, the victim will be able to approach the Equality Court and the establishment will then have to prove that the exclusion was not based on race."

1. **Why was the Equality Act passed?**

2. **Who bears the onus of proving discrimination in terms of the Act?**

3. **What process does a victim of discrimination follow in order to pursue a case in terms of the Act**

4. **What kind of remedies can the equality courts order?**

Hand out

An introduction to the Equality Act

1. Why was the Equality Act passed?

The Act was passed in order to give legislative effect to the right to equality contained in section 9 of the constitution. Its objectives are broadly to eliminate unfair discrimination and promote equality by providing user-friendly mechanisms for the processing of complaints.

2. Who bears the onus of proving discrimination in terms of the Act?

Once the applicant has made out a *prima facie* case of discrimination, the **onus of proof** lies with the respondent to prove that the discrimination did not take place as alleged or that the conduct is not based on one or more of the prohibited grounds.

3. What process does a victim of discrimination follow in order to pursue a case in terms of the Ac

Proceedings instituted in terms of the Act, may be instituted by a person acting in their own interest or on behalf of another who cannot act in their own name, a person acting as a member of or in the interests of a group or class of persons, a person acting in the public interest, any association acting in the interests of its members or the South African Human Rights Commission or the Commission for Gender Equality.

A victim of discrimination may approach the clerk of the equality court directly and lodge a complaint using the prescribed form. The clerk will assist the victim in processing the complaint.

4. What kind of remedies can the equality courts order?

The Courts have the power to make an enquiry in respect of an application under the Act and to make an appropriate order in the circumstances after such enquiry. The possible orders include interim and declaratory orders, making a settlement between the parties an order of court, ordering a payment of damages and ordering that an unconditional apology be made.

These key features of the Act will be dealt with in greater detail as the course progresses. Before this is done, the Act should be seen in the broader context of the human rights culture.

A Human Rights Culture

The origin of human rights

The Universal Declaration of Human Rights which was adopted and promulgated on 10 December 1948 by the General Assembly of the United Nations, marks the real beginning of the international recognition of human rights. The Declaration also marks the end of the notion that sovereign states can exist in splendid isolation from the world community and perpetrate or preside over violations of human rights without any concern being expressed by any other state. The Declaration was an historical response to the Second World War and in particular to the atrocities committed in Nazi Germany.

The declaration is not intended to have a binding legal effect on countries which adopt it. It rather represents a common expression of opinion of states subscribing to the declaration. It has become the yardstick by which constitutions can be measured and alleged human rights violations can be assessed. It has also heralded the birth of the so-called "human rights culture" in terms of which ordinary people appeal to universal notions of just treatment.

1.1 What is a human right?

Human rights are one of the hallmarks of democracy. They have been defined as "generally accepted principles of fairness and justice" or "universal moral rights that belong equally to all people simply because they are human beings."[23] Human rights are generally divided into the following categories:

Civil and political rights (e.g. equality, speech, vote etc.)

Social and economic rights (e.g. education, labour, property) and

Environmental and developmental rights (e.g. safe and healthy environment, health care, food, water).

A right must be distinguished from a freedom although both rights and freedoms usually exist in a Bill of Rights. A right is an entitlement to be given, something which the law recognises as yours (e.g. equality, dignity). A freedom is an entitlement to expect that those things/values which society recognises as good, are not taken away from you (e.g. movement).

Generally people are entitled to exercise their human rights to the extent that they do not unreasonably infringe on someone else's human rights. In the words of the American Judge, Oliver Wendell Holmes: "The right to swing my fist ends where another person's nose begins."

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[23] David McQuoid-Mason, Mandla Mchunu, Karthy Govender, Edward O'Brien, Mary Curd Larkin *Democracy for All* Juta 63

The Bill Of Rights

1.2 Who does the Bill of Rights apply to?

The South African Bill of Rights was introduced as part of the Constitution (Chapter 2). It begins with a section on the nature of rights (section 7) and the application of the Bill (section 8). The applicaton section reads as follows:

> "(1) The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.
>
> (2) A provision of the Bill of Rights binds a natural or a juristic person if, and the the extent that, it is applicable, taking into account the nature of the rights and the nature of any duty imposed by the right.
>
> (3) When applying a provision of the Bill of Rights to a natural or juristic person interms of subsection (2), a court -
>
> (a) in order to give effect to a right in the Bill, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right; and
>
> (b) may develop rules of the common law to limit the right provided that the limitation is in accordance with section 36(1).
>
> (4) A juristic person is entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and the nature of that juristic person."

An enquiry into the application of the Bill of Rights rests on three inter-related elements:

- the beneficiaries of the Bill (i.e. who is it intended to benefit/protect?)
- the duties imposed by the Bill, and
- time.

1.3 Who is protected by the Bill?

Most of the rights in the Bill of Rights refer to "everyone" (when the right is stated positively), or "no one" or "no person" (when the right is stated negatively). For example: "Everyone is equal before the law" and "No one may be subjected to slavery, servitude or forced labour." Some rights refer to narrower categories such as citizens (e.g. every citizen is free to make political choices…"), or adult citizens (e.g. "Every adult citizen has the right- to vote…), or workers (e.g. "Every worker has the right – to form and join a trde union…"). Clearly anyone seeking benefit from the Bill of Rights in respect of a particular right, would have to fall into the category to which the Bill ascribes the right.

When the Bill refers to "juristic persons" it requires the application to be considered in relation to the nature of the right and the nature of the juristic person. The following rights are more likely to be applied to juristic persons than others:

- equality,

- privacy,
- freedom of expression,
- freedom of association,
- the right to engage in collective bargaining,
- the property right,
- the right to access to information,
- just administrative action, access to court, and
- a fair trial.

1.4 Who is bound by the Bill?

The primary aim of any Bill of Rights, is generally to protect people from capricious actions by the state since the state is more powerful than individuals. This is called the **vertical relationship** and it is clear from Section 8(1) above that the Bill of Rights binds the state.

However, in addition to the vertical relationship, the Bill of Rights in certain circumstances protects people from abuses by other people. This is called the **horizontal relationship** and it is clear from Section 8(2) above that in certain circumstances the Bill of Rights protects individuals from abuses by other individuals.

1.5 When does the Bill apply?

The Bill of Rights is not retrospective in its application. The effect of this is that a person can only approach the court for protection in respect of an alleged violation which took place once the Bill was in place.

Limitation of rights

The limitation clause

Since basic rights and freedoms are not absolute, the Bill of Rights contains a general limitation clause which is as follows:

> "Limitation of rights
>
> 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 –
>
> (a) the nature of the right;
>
> (b) the importance of the purpose of the limitation;
>
> (c) the nature and extent of the limitation;
>
> (d) the relation between the limitation and its purpose; and
>
> (e) less restrictive means to achieve the purpose.
>
> (2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights."

In order to determine whether a limitation of a right is justifiable under this section, a two-stage enquiry is required:

1) the applicant would have to show that her right was protected by the Constitution and that it had been violated, and

2) the state would have to show that the violation amounted to a justifiable infringement of her right.

The limitation clause is also composed of two parts:

1) the law must be of general application, and

2) the limitation must be reasonable and justifiable in an open and democratic society etc.

1.6 Law of general application

In order to comply with this description, the instrument in question needs to be law. The court has found that administrative action does not constitute law[24] but rules of legislation, delegated legislation, common law and exercises of executive rule-making authorized by the Constitution, do

[24] *Premier of Mpumalanga v Executive Committee of the Association of Governing Bodies of State-aided Schools: Eastern Transvaal* 1999 (2) SA 91 (c)

constitute law.[25] It is not clear whether internal orders or directives of state agencies constitute law. It is likely that policy would not constitute law. The law will be "of general application" if it applies across-the-board, and not to a specific individual or individuals only and if it is not arbitrary in nature.

In the education sector, an example of the implication of this is as follows: if a public school were to conduct body searches of its learners in order to check for weapons entering school premises, this is likely to violate the right to human dignity and privacy of the learners. However, if a law/regulation were to set out the circumstances under which body searches could be conducted, and if this law/regulation were to pass the test of reasonableness and justifiability (e.g. only female guards searching female learners etc.), it would not be unconstitutional to limit these rights in this way.

Reasonableness and justifiability in an open and democratic society based on human dignity, equality and freedom

This qualification means that the reasons for the limitation must be ones which are acceptable in an open and democratic society etc. In addition, the limitation must be the minimum in order to achieve its purpose. In applying the limitation clause, the constitutional court said the following:

> *"The limitation of constitutional rights for a purpose that is reasonable and necessary in a democratic society involves the weighing up of competing values, and ultimately an assessment based on proportionality. This is implicit in the provisions of s 33(1) (36(1) in the final Constitution). The fact that different rights have different implications for democracy, and in the case of our Constitution, for "an open and democratic society based on freedom and equality" means that there is no absolute standard which can be laid down for determining reasonableness and necessity. Principles can be established, but the application of those principles to particular circumstances can only be done on a case-by-case basis. This is inherent in the requirement of proportionality, which calls for the balancing of different interests."*
>
> *S v Makwanyane 1995 (3) SA 391 (CC) 104*

In addition to the limitations clause, there are inherent limitations in certain rights contained in the Bill. For example, the right to assembly is limited by the requirement that those who assemble do so "peacefully and unarmed", the right to access to information is limited if disclosing that information would place someone's life in danger.

[25] *President of the Republic of South Africa v Hugo*1997 (4) SA 1 (CC)

The origin of the Equality Act

Although the drafting of the Act was the primary responsibility of the Department of Justice, because of the constitutional and public significance of the Act, an inclusive approach was adopted to the drafting. In May 1998 the Equality Drafting Unit (EDU) was launched as a joint project of the Human Rights Commission and the Department. A detailed framework for the Act was drafted by the EDU drawing on the expertise of a number of individuals, research institutions and NGO's as well as a number of expert conferences, public awareness workshops and a national consultative conference held in July 1999. This National Framework document was presented to the Minister and a drafting team appointed by the Minister prepared a draft bill for cabinet.

The draft bill was published on 25 October 1999 and a Joint Committee on the promotion of Equality and the Prevention of Unfair Discrimination was appointed to deal with the bill. After substantial redrafting by this committee, based on written and verbal submissions from a range of organizations, the bill was finally passed at the end of 2000.

Section 5

Key provisions of the Equality Act

At the end of this section you will be able to:

- Identify key aspects of the objects, interpretation and guiding principles of the Act
- Differentiate between the scope of the Equality Act, Employment Equity Act and Labour Relations Act
- Describe the landscape of institutions dealing with complaints of discrimination
- Describe key provisions relating to the equality courts
- Explain the procedure for laying a complaint
- Decide when to use the Equality Act
- Describe the factors to consider when deciding whether to use the Act

**Workshe
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Identifying key issues in the objects, interpretation and guiding principles of the Act

☞ **Individually, and then in pairs, read sections 2,3 and 4 of the Act which is in the Resources section of your files and record your answers to the following statements:**

Statement	True?	False?	Why? (Refer to the relevant section of the Act)
1. One of the primary objects of the Act is to give effect to part of the Constitution.			
2. One object of the Act is to give effect to the actual wording of the Constitution only.			
3. The specific constitutional rights referred to in the objects of the Act are the right to equality and the right to human dignity.			
4. The objects of the Act are both proactive and reactive.			

5. The objects of the Act relate only to South African law and imperatives.			
6. The context in which a dispute arises is not relevant when interpreting this Act			
7. Any person interpreting the Act is not obliged to take account of international law.			
8. The Act places a premium on the participation of parties in the processing of cases.			
9. Remedies under the Act should be aimed purely at deterring perpetrators of unfair discrimination and others from committing acts of unfair discrimination.			
10. Persons applying the Act should have special skills and capacity.			
11. The Act specifically recognises the role of patriarchy in causing discrimination.			
12. The Act recognises that measures to eliminate discrimination should be taken primarily at government level.			

Handout

Key Issues in the objects, interpretation and guiding principles of the Act

Statement	**True?**	**False?**	**Why? (Refer to the relevant section of the Act)**
1. One of the primary objects of the Act is to give effect to part of the Constitution.	✓		**Section 2(a) of the Act indicates that one of the objects is to enact legislation required by section 9 of the Constitution.**
2. One object of the Act is to give effect to the actual wording of the Constitution only.		✓	Section 2(b) of the Act indicates that the Act is to give effect to both the *letter and spirit* of the Constitution.
3. The specific constitutional rights referred to in the objects of the Act are the right to equality and the right to human dignity.	✓		Sections 2(b)(ii) and 2(b)(iv) refer to these rights. Section 2(b)(v) refers to "incitement to cause harm" in section 16(2)(c) of the constitution. This is not a right but a limitation on the right to freedom of expression.
4. The objects of the Act are both proactive and reactive.	✓		Examples of "reactive" objects are those designed to deal with unfair discrimination after it has occurred (e.g. section 2(b)(f)). Examples of "proactive" objects are those designed to promote equality (section 2(b)(ii)) or educate the public (section (2(b)(e)).
5. The objects of the Act relate only to South African law and imperatives.		✓	Section 2(h) refers to international law and instruments in the form of conventions.
6. The context in which a dispute arises is not relevant when interpreting this Act		✓	Section 3(3) expressly provides that any person applying or interpreting the Act must take account of the context of the dispute and the purpose of the Act.
7. Any person interpreting the Act is not obliged to take account of international law.	✓		Section 3(2) states that a person interpreting the Act *may* be mindful of international law (and other law).
8. The Act places a premium on the participation of parties in the processing of cases.	✓		Sections 4(1)(a), 4(1)(b) and 4(1)(c) indicate an intention to encourage participation of parties in proceedings under the Act.
9. Remedies under the Act should be aimed purely at deterring perpetrators of unfair discrimination		✓	Section 4(1)(d) is clear that corrective and restorative measures should be used in conjunction with measures of a

and others from committing acts of unfair discrimination.			deterrent nature.
10. Persons applying the Act should have special skills and capacity.	✓		This is clear from Section 4(1)(e).
11. The Act specifically recognises the role of patriarchy in causing discrimination.	✓		Section 4(2)(a) refers to patriarchy with colonialism and apartheid as causes of systemic discrimination and inequalities.
12. The Act recognises that measures to eliminate discrimination should be taken primarily at government level.		✓	Section 4(2)(b) refers to the need to take measures *at all levels* to eliminate discrimination and inequalities.

Worksheet

The scope of the Equality Act

The Equality Act applies as follows:

"5. (1) This Act binds the State and all persons.

(2) If any conflict relating to a matter dealt with in this Act arises between this Act and the provisions of any other law, other than the Constitution or an Act of Parliament expressly amending this Act, the provisions of this Act must prevail.

(3) This Act does not apply to any person to whom and to the extent to which the Employment Equity Act, 1998 (Act No. 55 of 1998), applies."

It is therefore clear that:

- The *State* is bound by the Act. The state is defined in the Act to include:

  "- any department of State or administration in the national, provincial or local sphere of government,

  - any other functionary or institution -

    - exercising a power or performing a function in terms of the Constitution or a provincial constitution; or

    - exercising a public power or performing a public function in terms of any legislation or under customary law or tradition."

- All *persons* are bound by the Act (e.g. this would include citizens and non-citizens)

- *Persons covered by the Employment Equity Act* (and this would include juristic persons) are not covered by the Equality Act to the extent that the Employment Equity Act covers them

Chapter 2 of the Employment Equality Act applies to all employees and employers.

Except where chapter 3 provides otherwise, chapter 3 applies only to designated employers and people from designated groups.

'designated employer' means-

(a) an employer who employs 50 or more employees;

(b) an employer who employs fewer that 50 employees, but has a total annual turnover that is equal to or above the applicable annual turnover of a small business in terms of Schedule 4 to this Act;

(c) a municipality, as referred to in Chapter 7 of the Constitution;

(d) an organ of state as defined in section 239 of the Constitution, but excluding local spheres of government, the National Defence Force, the National Intelligence Agency and the South African Secret Service; and

(e) an employer bound by a collective agreement in terms of section 23 or 31 of the Labour Relations Act, which appoints it as a designated employer in terms of this Act, to the extent provided for in the agreement;

'designated groups' means black people, women and people with disabilities;

Although the Employment Equity generally covers acts of discrimination which take place between employers and employees and in the workplace, it nevertheless expressly excludes discriminatory dismissals. These are covered by the Labour Relations Act which covers all dismissals. Unfair discriminatory dismissals are defined as "automatically unfair dismissals" in the Labour Relations Act (section 187). The relevant section reads as follows:

187 Automatically unfair dismissals

(1) A dismissal is automatically unfair if the employer, in dismissing the employee, acts contrary to section 5* or, if the reason for the dismissal is-

(f) that the employer unfairly discriminated against an employee, directly or indirectly, on any arbitrary ground, including, but not limited to race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility

Note: The Employment Equity Act covers acts of discrimination, *other than dismissal*, committed by employers or Temporary Employment Services acting on the express or implied instructions of employers. Discriminatory dismissals are covered under the Labour Relations Act (section 187) as "automatically unfair dismissals". The application of the Equality Act does not expressly exclude those persons covered by the Labour Relations Act. The potential implication of this is that an employee claiming that his/her dismissal is unfair because it is discriminatory, could opt to process the dispute *either* via the Labour Relations Act procedures *or* via the Equality Act procedures. It remains to be seen whether the equality courts will entertain such a dispute given the fact that an established and prescribed channel exists in terms of the Labour Relations Act.

☞ **Individually, and then in pairs, sort the cards given to you by the trainer into three piles: those situations in which the Equality Act would apply, those situations in which the Employment Equity Act would apply and those situations in which the Equality Act and the Labour Relations Act would apply. Record the letters of the cards in the columns below**

Equality Act (8 cards)	Employment Equity Act (5 cards)	Labour Relations Act/Equality Act (3 cards)

Handout

Equality Act	Employment Equity Act	Labour Relations Act/Equality Act
C Mr Daniels, who dies without leaving a will, was married to Mrs Daniels by Muslim ceremony prior to his death. In terms of the law of intestate succession, Mrs Daniels is not entitled to the house they lived in as their marriage is not recognised in law.	**1.6.1 A** Ntabiseng Dlamini is not appointed to a position she applied for because she is a single mother and the employer assumes that she has to collect her children from school during working hours.	**1.6.2 K** **Susan du Plessis, a white woman was dismissed by her employer (African Textiles) because her employer wanted to create a vacancy for an affirmative action candidate.**
E **Susan Pillay, a coloured woman is refused entry to a nightclub on the grounds that she is not properly dressed. She suspects that she was refused entry because of her race.**	**1.6.3 B** **Rachel Ntsabo resigns from her job because she claims she has been continually sexually harassed by her supervisor and although she had complained to management, the company had done nothing about the harassment.**	O **Mavis Kekana is a domestic worker. She is dismissed by her employer when her employer discovers that she is pregnant.**
F **Nosipho Mkhize is attacked in her school playground by a classmate, the classmate's boyfriend and mother. She believes that the attack was racially motivated.**	**D** **The black employees at Africa Holdings claim that they have been indirectly discriminated against in that the company forces them to join the provident fund while white employees may join the pension fund.**	**P** Martha Stevens is sexually harassed at her workplace in the security industry. She raises a grievance but her employer does nothing about the harassment and eventually she has no option but to resign. She claims that her resignation is in fact a "constructive dismissal".

Equality Act	Employment Equity Act	Labour Relations Act/Equality Act
G **The National Coalition for Gay and Lesbian Equality claim that the inclusion of sodomy as an offence in the Criminal Procedures Act is unconstitutional.**	H **Naledi Nhlapo applies for a promotion but is unsuccessful. She claims that it is because she is an African female.**	1.7

Equality Act	Employment Equity Act	Labour Relations Act/Equality Act
I **Ms J claims that the twins she has conceived through artificial insemination and is raising with her same-sex partner should be registered as the couple's children by the Department of Home Affairs.**	**L** **Noeleen Brits is a bomb disposal expert in the South African Police Service. She claims that she has been unfairly discriminated against because she is not promoted even though she is due for promotion, because she is a white woman.**	
J **Corporal Dlamini is gay. She claims that she is being discriminated against in the SANDF by not being promoted.**		
M Vera Petersen works for the National Intelligence Agency. She claims that she has been discriminated against by not being promoted because she has children and prefers not to travel extensively.		

Equality Act	Employment Equity Act	Labour Relations Act/Equality Act
N General Kekana is dismissed by the SANDF when the SANDF discovers that she is a lesbian.		

Discrimination

In terms of Section 1 of the Act:

> "discrimination means any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly –
>
> (a) imposes burdens, obligations or disadvantage on; or
>
> (b) withholds benefits, opportunities or advantages from,
>
> any person on one or more of the prohibited grounds."

Implications of the definition:

- discrimination may be caused by a *positive action* (i.e. "any act") or by *a failure to act/inaction* (i.e. "omission"). Examples of positive actions include the refusal of accommodation, the denial of a mortgage bond, refusing medical treatment. Examples of omissions include: failure to install facilities for disabled people, failing to meet the needs of nursing mothers (such as breastfeeding or nappy-changing facilities),
- discrimination may arise in *policy* (e.g. a school admissions policy), *law* (e.g. act of parliament), *rule* (e.g. a restaurant rule prohibiting certain clothing), *practice* (e.g. regular habit of an organization), *condition* (e.g. condition of a contract) or *situation* (e.g. "once off" event),
- discrimination may be *direct or indirect*: *Direct discrimination* consists of unfavourable or differential treatment on the basis of one of the grounds listed in section 1[26] of the Act. *Indirect discrimination* is discrimination which does not explicitly distinguish between people on the basis of any listed ground (and possible grounds that are not listed in the Act) but nonetheless has a discriminatory effect on particular groups or individuals,
- discrimination has the effect of *causing disadvantage* (by imposing burdens, obligations or disadvantage) or *limiting advantage* (by withholding benefits, opportunities or advantages). Examples of causing disadvantage include: requiring women to retire at 60 while men retire at 65, requiring HIV positive people to pay higher premiums for medical insurance.. Examples of limiting advantage include: pardoning prisoners who were mothers and not those who were fathers, denying HIV-positive people access to benefits.
- discrimination affects any *person* (i.e. as opposed to organization).

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[26] "prohibited grounds are:

(a) race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth; or

(b) any other ground where discrimination based on that other ground –

(i) causes or perpetuates systemic disadvantage;

(ii) undermines human dignity; or

(iii) adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on a ground in paragraph (a)."

Prohibited Grounds

"Prohibited grounds are:

(a) race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth; or

(b) any other ground where discrimination based on that other ground –

(i) causes or perpetuates systemic disadvantage;

(ii) undermines human dignity; or

adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on a ground in paragraph (a)."

1.8 Race

Race is one of the three grounds which the Act pays special attention to. Section 7 lists examples of race discrimination although this list is not exhaustive. Race can overlap with the other prohibited grounds of colour and ethnic origin but it primarily refers to the distinction between "black" and "white" as well as to the apartheid classifications of "African", "coloured", "Asian" and "white".

1.9 Gender and sex

As in the case of race, gender is given a special focus in the Act. Section 8 lists examples of gender discrimination although the list is illustrative rather than exhaustive. The listed examples cover both gender and sex discrimination. "Examples of biological difference are physical strength and reproductive capacity (sex). Examples of socially constructed features of masculinity and femininity are aggression and nurturing (gender)."[27]

Pregnancy

Although pregnancy is covered under gender and sex discrimination, it is mentioned separately because of the importance attached to this form of discrimination. Pregnancy is defined to include any condition related to pregnancy, intended pregnancy, potential pregnancy or termination of pregnancy.

Marital Status

This ground "includes the status or condition of being single, married, divorced, widowed or in a relationship, whether with a person of the same of the opposite sex, involving a commitment to reciprocal support in a relationship." (section 1(1)(v) of the Act). Examples of discrimination on this ground include single people being denied state housing subsidies, a man being prevented from attending a course run by a church organization because he is a divorcee, a widow being accused of being a witch and being expelled from her community.

Sexual Orientation

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[27] Introduction to the Promotion of Equality and Prevention of Unfair Discrimination Act Edited by Cathi Albertyn, Beth Goldblatt and Chris Roederer p 60

Although sexual orientation is not defined in the Act, the Constitutional Court has accepted the following definition:

> **"Sexual orientation is defined by reference to erotic attraction: in the case of heterosexuals, to members of the opposite sex, in the case of gays and lesbians, to members of the same sex. Potentially, a homosexual or gay or lesbian person can therefore be anyone who is erotically attracted to members of his or her own sex."[28]**

Age

Section 1(1)(i) of the Act defines age follows:

> **"Age includes the conditions of disadvantage and vulnerability suffered by persons on the basis of their age, especially advanced age."**

Religion

Freedom of religion and the prohibition on religious discrimination are closely related. Unfair discrimination on the basis of religion can extend to unfair discrimination for conduct in fulfillment of religious beliefs. For example: students being prohibited from wearing clothes in accordance with Islam, not providing meals in accordance with dietary laws in a university or school canteen.

A questions which arises in connection with discrimination on the basis of religion, is whether religious institutions can themselves discriminate in accordance with the dictates if their religion. For example, a Christian school dismisses its headmaster (a married man) when it is discovered that he is having an affair. In such cases, freedom of religion is likely to be balanced with freedom of religion and some discriminatory practices are likely to be allowed in accordance with the beliefs of that religion.

Conscience and belief

These grounds overlap with religion but derive from non-religious values and beliefs rather than religious doctrine. An example of discrimination on this ground is forcing health care professionals to perform abortions.

Culture and language

Nether of these terms are defined in the Act: the former because it is very difficult to define and the latter because it does not require a definition. An example of discrimination on the basis of culture would include ignoring the food, music and other practices of a certain culture at functions of an organisation. An example of discrimination on the basis of language would be only catering for classes in one particular language at a government school located in an area dominated by another language group.

Ethnic or social group

This ground is said to "combine a biological group that shares a common descent, with a common cultural heritage and, sometimes, a territorial base."[29] In South Africa examples

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[28] National Coalition for Gay and Lesbian Equality & Another v Minister of Justice & others 1999 (1) SA 6 (CC) para 20

[29] Introduction to the Promotion of Equality and Prevention of Unfair Discrimination Act Edited by Cathi Albertyn, Beth Goldblatt and Chris Roederer p 79

of ethnic groups would include Venda, Sotho, Chinese, Greek or Italian. An example of discrimination on the basis of ethnic group would be to recognise the land claims of a dominant ethnic group in a particular geographical area and ignore the similar claims of a smaller ethnic group in the same area.

Social group refers to social origin or status (e.g. persons of a particular socio-economic status). Ethnic and social group can be combined in acts of discrimination. For example only distributing food aid to members of a particular ethic and social group in an area in which all groups are affected by famine or disaster.

Birth

Birth is not defined in the Act and may overlap with grounds such as nationality, race, ethnicity and family status. On its own, it is likely to refer to the status of a person at birth (i.e. "legitimate" or "illegitimate". An example of discrimination on this ground is discrimination against illegitimate children regarding inheritance.

Additional grounds

Although the grounds of HIV/AIDS status, socio-economic status, nationality, family responsibility and family status were included in the original draft Bill, they were excluded from the final draft. After pressure from lobby groups, parliament added the following clause to cater for these grounds:

> **"34 (1) In view of the overwhelming evidence of the importance, impact on society and link to systematic disadvantage and discrimination on the grounds of HIV/AIDS status, socio-economic status, nationality, family responsibility and family status –**
>
> **(a) special consideration must be given to the inclusion of these grounds in paragraph (a) of the definition of "prohibited grounds" by the Minister;**
>
> **(b) the Equality Review Committee must, within one year, investigate and make the necessary recommendations to the Minister."**

Section 34(2) of the Act makes it clear that the section does not prevent the courts from deciding cases based on these grounds, a person bringing a complaint based on these grounds, or a court deciding that these grounds can be brought within the definition of unlisted prohibited grounds or being included within one or more of the listed prohibited grounds.

Family responsibility **is defined as "responsibility in relation to a complainant's spouse, partner, (dependant), child or other members of his or her family in respect of whom the member is liable for care and support." (Section 1(1)(xi)). An example of discrimination on this basis would be excluding a woman from consideration of promotion because she cannot work long hours in the office as she has to attend to her children.**

Family status **is defined to include "membership in a family and the social, cultural and legal rights and expectations associated with such status" (section 1(1)(xii)). An example of**

discrimination on this basis would be prohibiting members of the same family from being employed by the same employer.

Socio-economic status **is defined to include "a social and economic condition or perceived condition of a person who is disadvantaged by poverty, low employment status or lack of or low-level educational qualifications." (Section 1(1)(xxvi)). An example of discrimination on this basis would be excluding people from bank loans on the grounds that they constitute a credit risk because of their low economic status.**

"Nationality **means ethnic or national origin and include practices associated with xenophobia and other adverse assumptions of a discriminatory nature but does not include rights and obligations normally associated with citizenship." (Section 1(1)(xvii)). An example of discrimination on this basis would be refusing to employ people of a particular nationality.**

Fair and Unfair Discrimination

In terms of Section 6 of the Act, "Neither the State nor any person may unfairly discriminate against any person." Sections 7,8 and 9 provide examples of discrimination on the grounds of race, gender and disability respectively. Section 10 deals with hate speech which will be covered in more detail below.

Implications of the prohibition:

- the prohibition applies to the State and to people (i.e. it applies both *vertically* (as between the State and people) and *horizontally* (as between people).

- only unfair discrimination is prohibited which implies that *fair discrimination* is recognised. This is established in section 14(1) which states that "It is not unfair discrimination to protect or advance persons or categories of persons disadvantaged by unfair discrimination or the members of such groups or categories of persons." Section 14(2)(c) also implies that discrimination may be fair if it "reasonably and justifiably differentiates between persons according to objectively determinable criteria, intrinsic to the activity concerned."

With the exception of hate speech, which by definition cannot be fair, the determination of whether an act or omission is fair discrimination is made based on the consideration of the following factors (section 14(2)(a)) which must be considered:

"(a) the context;

(b) the factors referred to in subsection (3);

(c) whether the discrimination reasonably and justifiably differentiated between persons according to objectively determinable criteria, intrinsic to the activity concerned"

The Act does not indicate the order in which these factors must be considered, nor whether priority is given to any of them.

The specific factors referred to in 14(3) are as follows:

(a) whether the discrimination impairs or is likely to impair human dignity;

(b) the impact or likely impact of the discrimination on the complainant;

(c) the position of the complainant in society and whether he or she suffers from patterns of disadvantage or belongs to a group that suffers from such patterns of disadvantage;

(d) the nature and extent of the discrimination;

(e) whether the discrimination is systemic in nature;

(f) whether the discrimination has a legitimate purpose;

(g) whether and to what extent the discrimination achieves its purpose;

(h) whether there are less restrictive and less disadvantageous means to achieve the purpose;

(i) whether and to what extent the respondent has taken such steps as being reasonable in the circumstances to-

- **address the disadvantage which arises from or is related to one or more of the prohibited grounds; or**

- **accommodate diversity;**

The Onus of Proof

As we saw from the very first exercise of the workshop, once a prima facie case of discrimination has been made out by the complainant, the onus of proof lies with the respondent. The reasons for this are that discrimination is notoriously difficult to prove, not least because the proof of discrimination often lies in the hands of the respondent.

A prima facie case

A prima facie case is proof "which, if uncontradicted and believed at trial, would establish his right."[30] To establish a prima facie case in terms of the Equality Act, the complainant would have to prove that:

- there was an act or omission,
- which caused harm (i.e. withholding benefit or imposing disadvantage),
- on a prohibited ground.

The onus of proof

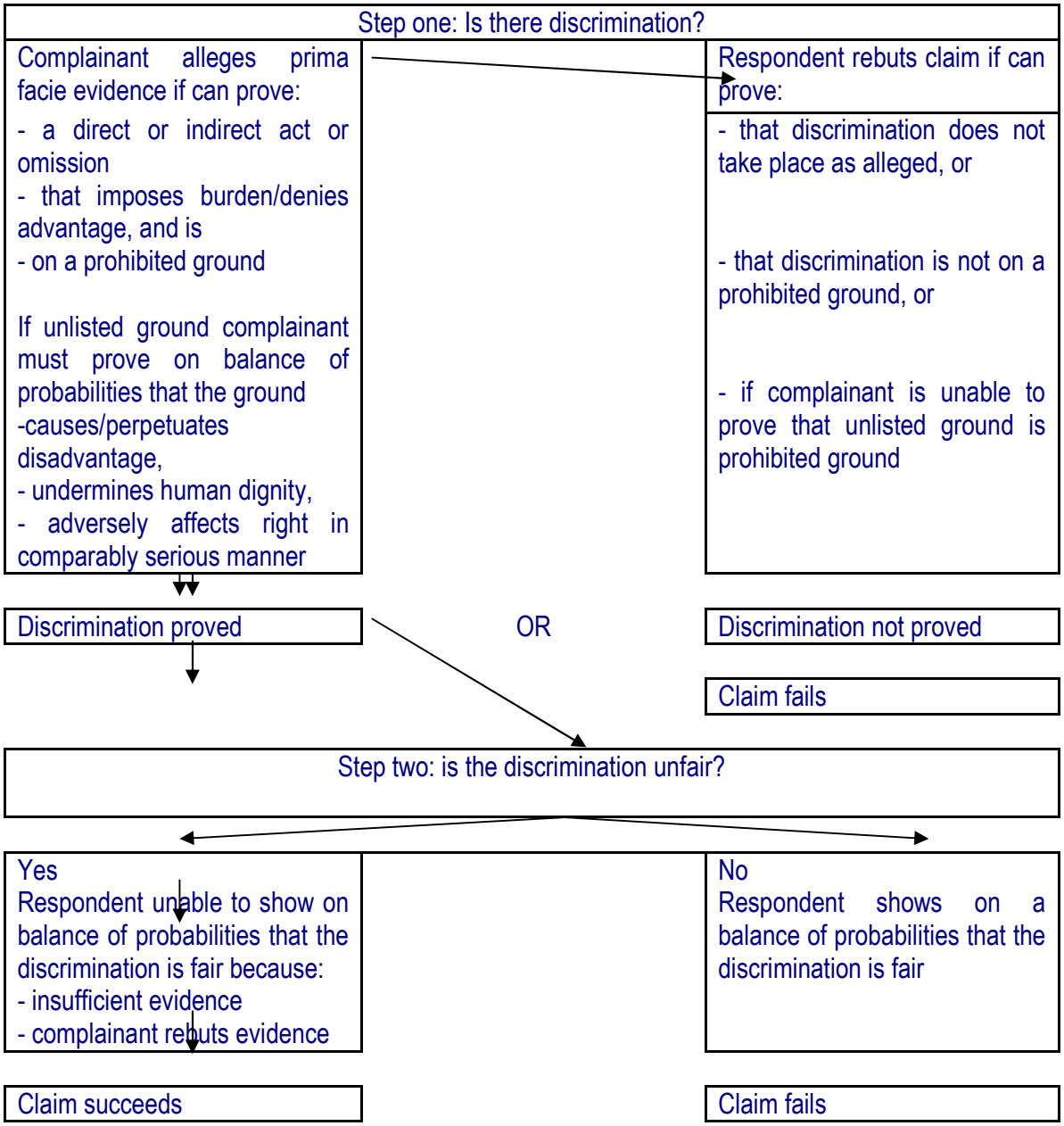
If the complainant establishes the above, the respondent can only rebut this by either:

- proving that the discrimination did not take place, or
- proving that the conduct is not based on one or more of the prohibited grounds.

The one exception to the process described above, is in circumstances in which the complainant alleges that discrimination took place on an unlisted ground. In such circumstances the complainant would have to prove on a balance of probabilities that the listed ground falls within the definition of prohibited grounds. If the complainant was able to do this, the process would continue as indicated (i.e. the complainant would have to make out a prima facie case of discrimination on this additional ground and the respondent would then have to rebut this).

[30] Webster v Mitchell 1948 (1) SA 1186 (W) at 1189 cited in Introduction to the Promotion of Equality and Prevention of Unfair Discrimination Act Edited by Cathi Albertyn, Beth Goldblatt and Chris Roederer p 50

An overview of this procedure can be illustrated as follows:[31]



[31] this diagram is adapted from Introduction to the Promotion of Equality and Prevention of Unfair Discrimination Act Edited by Cathi Albertyn, Beth Goldblatt and Chris Roederer p 52

Hate speech, harassment and dissemination of Information

1.10 Hate speech

The prohibition on hate speech in the Act has to be balanced with the right to freedom of expression, also contained in the constitution. The prohibition is contained in Section 10 and a proviso balancing this right against freedom of expression is contained in Section 12.

"Prohibition of hate speech

10 (1) Subject to the proviso in section 12, no person may publish, propagate, advocate or communicate words based on one or more of the prohibited grounds, against any person, that could reasonably be construed to demonstrate a clear intention to–

(a) be hurtful;

(b) be harmful or incite harm;

(c) promote or propagate hatred.

(2) Without prejudice to any remedies of a civil nature under this Act, the court may, in accordance with section 21(2)(n) and where appropriate, refer any case dealing with the publication, advocacy, propagation or communication of hate speech as contemplated in section (1), to the Directorate of Public Prosecutions having jurisdiction for the institution of criminal proceedings in terms of the common law or relevant legislation.

Hate speech and harassment

15. In cases of hate speech and harassment section 14 does not apply."

Some of the implications of these sections are:

- the prohibition goes beyond disseminating words to communicating words. The implication of this is that hate speech may occur between two people,
- the medium of communicating the hatred is through words,
- the Act requires that a reasonable person *could* construe the intention to be hurtful (i.e. not that a reasonable person *would* construe a hurtful intention),
- the test is not the intention of the person allegedly using hate speech but whether a reasonable person could construe their words to be hate speech.

The proviso in Section 12 reads as follows:

"Provided that *bona fide* engagement in artistic creativity, academic and scientific inquiry, fair and accurate reporting in the public interest or publication of any information, advertisement or notice in accordance with section 16 of the Constitution, is not precluded by this section."

Harassment

"11. No person may subject any person to harassment"

"1 (1)(xiii) Harassment" means unwanted conduct which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and which is related to –

(d) sex, gender or sexual orientation; or

(e) a person's membership or presumed membership of a group identified by one or more of the prohibited grounds or a characteristic associated with such group."

Some of the implications of these sections are:

- the emphasis is on the person being harassed rather than the harasser (i.e. intention is not relevant);
- conduct can be verbal, physical or non-verbal;
- conduct can be persistent (e.g. a number of small acts which collectively constitute harassment), or serious (e.g. one major act which constitutes harassment);
- harassment can be any unwanted conduct;
- harassment must relate to one of the prohibited grounds (in other words, it must relate to the victim's membership of a particular group;
- the victim need not actually belong to a particular group but be perceived to belong to the group for discrimination to take place.

Dissemination and publication of information that unfairly discriminates

"12. No person may –

(a) disseminate or broadcast any information;

(b) publish or display any information or notice that could reasonably be construed or reasonably be understood to demonstrate a clear intention to unfairly discriminate against any person: provided that *bona fide* engagement in artistic creativity, academic and scientific inquiry, fair and accurate reporting in the public interest or publication of any information, advertisement or notice in accordance with section 16 of the Constitution, is not precluded by this section."

According to Albertyn, Goldblatt and Roederer[32], this section raises a number of problems:

- does the conduct in question involve publication or dissemination as described in s12(a) or (b); if so
- could this conduct reasonably be understood to demonstrate a clear intention to discriminate unfairly against any person, if so
- can the discrimination in question be justified under s 14 as being fair and if not

[32] Introduction to the Promotion of Equality and Prevention of Unfair Discrimination Act Edited by Cathi Albertyn, Beth Goldblatt and Chris Roederer p 100

- is the conduct exempted by way of falling under the protection of the s12 proviso?

In essence, it would appear as if the very actions which section 12(a) seeks to prohibit, section 12(b) permits in terms of freedom of expression. In summary therefore, section 12 only prohibits the following information:

- information which both could reasonably be understood to demonstrate a clear intention to discriminate unfairly against a person, and
- amounts to either propaganda for war, incitement of imminent violence, or advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.[33]

[33] Ibid p100

The landscape of institutions dealing with equality and discrimination complaints

The Constitutional Court
is empowered to hear complaints in terms of section 9 (the equality clause) of the Constitution

The Human Rights Commission
is empowered in terms of its enabling Act to hear complaints related to discrimination and is recognised as an "alternative forum" by the Act

The Supreme Court of Appeal

is empowered to hear complaints in terms of section 9 (the equality clause) of the Constitution

The Labour Appeal Court
has jurisdiction over discriminatory dismissals (automatically unfair dismissals) and acts of unfair discrimination which occur in the workplace

The Gender Commission

is empowered in terms of its enabling Act to hear complaints related to discrimination and is recognised as an "alternative forum" by the Act

The High Court

is empowered to hear complaints in terms of section 9 (the equality clause) of the Constitution
The High Court is also empowered to sit as an **Equality Court** in terms of the Act

The Labour Court
has jurisdiction over discriminatory dismissals (automatically unfair dismissals) and acts of unfair discrimination which occur in the workplace

The Land Claims Court

hears disputes about land

The Magistrates' Courts

is empowered to hear complaints in terms of

The Commission for Conciliation, Mediation and Arbitration (CCMA)
has jurisdiction over discriminatory dismissals

The Public Protector Receives and hears complaints from aggrieved persons against government agencies or officials	section 9 (the equality clause) of the Constitution Magistrates' Courts are also empowered to sit as **Equality Courts** in terms of the Act	(automatically unfair dismissals) and acts of unfair **discrimination** which occur in the workplace for conciliation only

**Workshe
et**

Key provisions relating to the Equality Courts

☞ **The extracts from the Act below describe the key provisions relating to the Equality Courts. Individually, and then in pairs, having read the extracts, record your responses to the questions which follow**

"Guiding principles

4. (1) In the adjudication of any proceedings which are instituted in terms of or under this Act, the following principles should apply:

(a) The expeditious and informal processing of cases, which facilitate participation by parties to the proceedings;

(b) access to justice to all persons in relevant judicial and other dispute resolution forums;

(c) the use of rules of procedure in terms of section 19 and criteria to facilitate participation;

(d) the use of corrective or restorative measures in conjunction with measures of a deterrent nature;

(e) the development of special skills and capacity for persons applying this Act in order to ensure effective implementation and administration thereof.

…

Equality courts and presiding officers

16(1) For the purpose of this Act, but subject to section 31 –

(a) every magistrate's court and every High Court is an equality court for the area of its jurisdiction; and

(b) any magistrate, additional magistrate and judge may be designated by the Minister, after consultation with the Judge President or the head of an administrative region defined in terms of section 1 of the Magistrates' Courts Act (Act No. 32 of 1944), concerned, as the case may be, as a presiding officer of the equality court of the area in respect of which he or she is magistrate, additional magistrate or judge, as the case may be.

…

Rules and court proceedings

19(1) Except as is otherwise provided in this Act, the provisions of the Magistrates' Courts Act, 1944…and the Supreme Court Act, 1959…and of the rules made thereunder as well as the rules made under the Rules Board for Court of Law Act, 1985…apply with the necessary changes required by the context to the equality courts, in so far as these provisions relate to -…

(f) jurisdiction, subject to subsection (3)…

…

(3) (a) Subject to paragraph (b), nothing in this Act precludes a magistrates' court sitting as an equality court from making an order contemplated in section 21(2), which exceeds the monetary jurisdiction of a magistrates' court, in which case the order must be submitted in the prescribed manner to a judge of the High Court having jurisdiction for confirmation.
(b) The operation of paragraph (a), relating to the confirmation of an order, is suspended until any appeal contemplated in section 23 is finalised.

…

20. (3) (a) The clerk of the equality court must, within the prescribed period of receiving such notification, refer the matter to a presiding officer of the equality court in question, who must, within the prescribed period, decide whether the matter is to be heard in the equality court or whether it should be referred to another appropriate institution, body, court, tribunal or other forum (hereafter referred to as an alternative forum) which, in the presiding officer's opinion, can deal more appropriately with the matter in terms of that alternative forum's powers and functions."

When referring the matter the clerk must take all relevant circumstances into account including:
"20(4)(a) the personal circumstances of the parties and particularly the complainant;
(b) the physical accessibility of any contemplated alternative forum;
(c) the needs and wishes of the parties and particularly the complainant;
(d) the nature of the intended proceedings and whether the outcome of the proceedings could facilitate the development of judicial precedent and jurisprudence in this area of law;
(e) the views of the appropriate functionary at any contemplated alternative forum

1. Are the equality courts bound to hear all cases referred to them?

_____

_____

_____

2. Under what circumstances would an equality court refer a case to an alternative forum?

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_____

3. **What considerations would the clerk of the equality court take into account when referring a case to an alternative forum?**

4. **Does a magistrate's court, sitting as an equality court have authority to make an order exceeding the normal monetary jurisdiction of a magistrate's court, and if so, what is the procedure involved?**

5. **Which principles should be applied when deciding cases in the equality courts?**

Hando ut

Suggested responses to exercise on key provisions relating to the Equality Courts

1. Are the equality courts bound to hear all cases referred to them?

No, the equality courts are not bound to hear all cases referred to them. They may refer cases to an alternative forum as listed in the Act (section 20(3)(a)).

2. Under what circumstances would an equality court refer a case to an alternative forum?

The presiding officer of an equality court would refer a case to an alternative forum if the alternative forum could deal with the case more appropriately in terms of its powers and functions (section 20(3)(a)).

3. What considerations would the clerk of the equality court take into account when referring a case to an alternative forum?

The presiding officer would take all relevant circumstances into account including:

- the personal circumstances of the parties and particularly the complainant;
- the physical accessibility of any contemplated alternative forum;
- the needs and wishes of the parties and particularly the complainant;
- the nature of the intended proceedings and whether the outcome of the proceedings could facilitate the development of judicial precedent and jurisprudence in this area of law;
- the views of the appropriate functionary at any contemplated alternative forum (section 20(4))

4. Does a magistrate's court, sitting as an equality court have authority to make an order exceeding the normal monetary jurisdiction of a magistrate's court, and if so, what is the procedure involved?

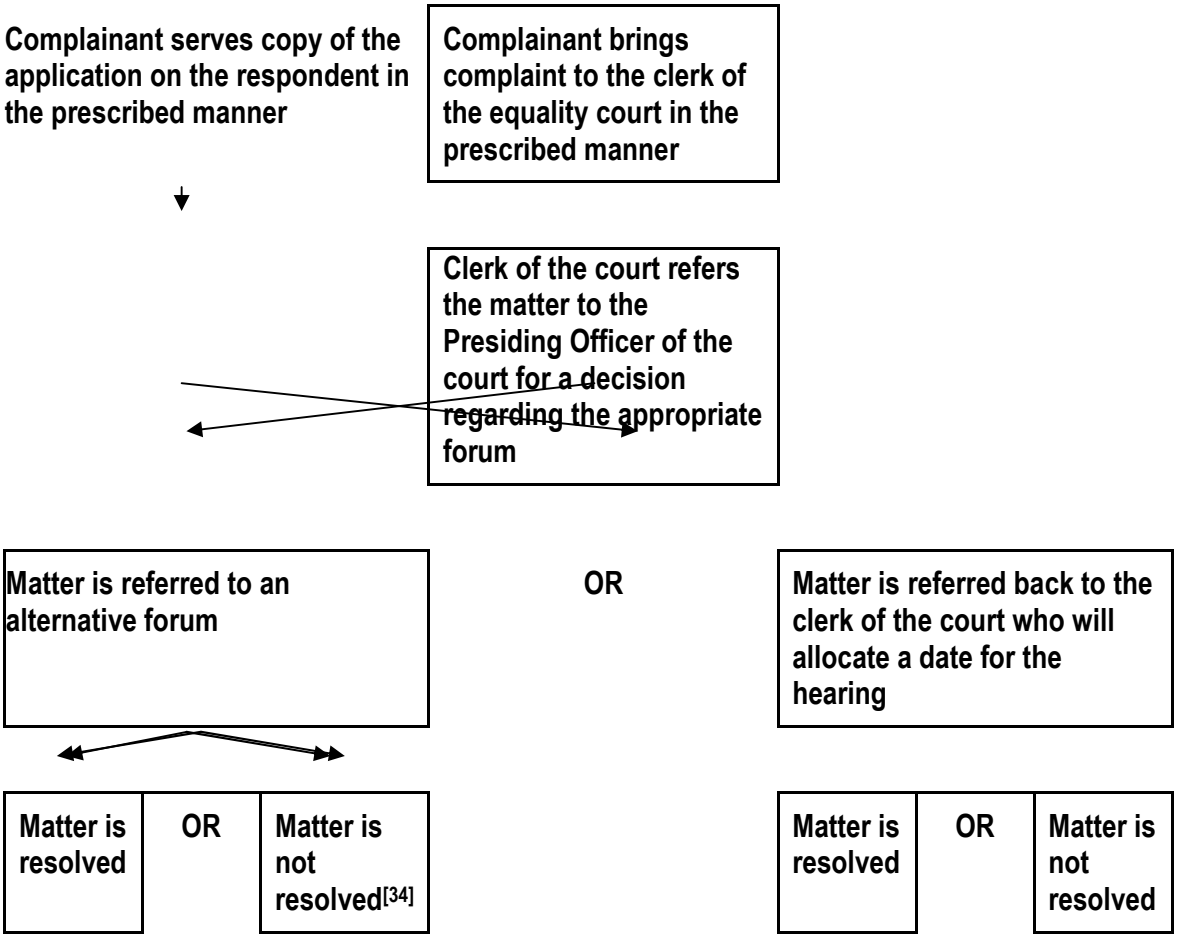
Yes, the magistrate's court, sitting as an equality court does have the power to exceed the normal monetary jurisdiction of the court. Such an order would have to be submitted to a judge of the High Court, in the prescribed manner, for confirmation (section 19(3)(a)).

5. Which principles should be applied when deciding cases in the equality courts?

The following principles should apply when deciding cases in the equality courts:

- The expeditious and informal processing of cases, which facilitate participation by parties to the proceedings;
- access to justice to all persons in relevant judicial and other dispute resolution forums;
- the use of rules of procedure in terms of section 19 and criteria to facilitate participation;
- the use of corrective or restorative measures in conjunction with measures of a deterrent nature;
- the development of special skills and capacity for persons applying this Act in order to ensure effective implementation and administration thereof. (section 4(1))

Procedure for laying a complaint



[34] If the matter is not resolved in the alternative forum, it may be re-referred to the equality court. It may also be re-referred to the equality court if the alternative forum is unable to resolve the matter within the prescribed period.

Remedies
Appeals and reviews

1.11 Remedies

Section 21(2) sets out the range of remedies available to the equality court:

(a) an interim order;
(b) a declaratory order;
(c) an order making a settlement between the parties to the proceedings an order of court;
(d) an order for the payment of any damages in respect of any proven financial loss, including future loss, or in respect of impairment of dignity, pain and suffering or emotional and psychological suffering, as a result of the unfair discrimination, hate speech or harassment in question;
(e) after hearing the views of the claimant in the matter, an order for the payment of damages in the form of an award to an appropriate body or organisation;
(f) an order restraining unfair or discriminatory practices or directing that specific steps be taken to stop the unfair discrimination, hate speech or harassment;
(g) an order to make specific opportunities and privileges unfairly denied in the circumstances, available to the complainant in question;
(h) an order for the implementation of special measures to address the unfair discrimination, hate speech or harassment in question;
(i) an order directing the reasonable accommodation of a group or class of persons by the respondent;
(j) an order that an unconditional apology be made;
(k) an order requiring the respondent to undergo an audit of specific policies or practices as determined by the court;
(l) an appropriate order of a deterrent nature, including the recommendation to the appropriate authority, to suspend or revoke the license of a person;
(m) a directive requiring the respondent to make regular progress reports to the court or to the relevant constitutions institution regarding the implementation of the court's order;
(n) an order directing the clerk of the equality court to submit the matter to the Director of Public Prosecutions having jurisdiction for the possible institution of criminal proceedings in terms of the common law or the relevant legislation;
(o) an appropriate order of costs against any party to the proceedings;
(p) an order to comply with any provision of the Act.

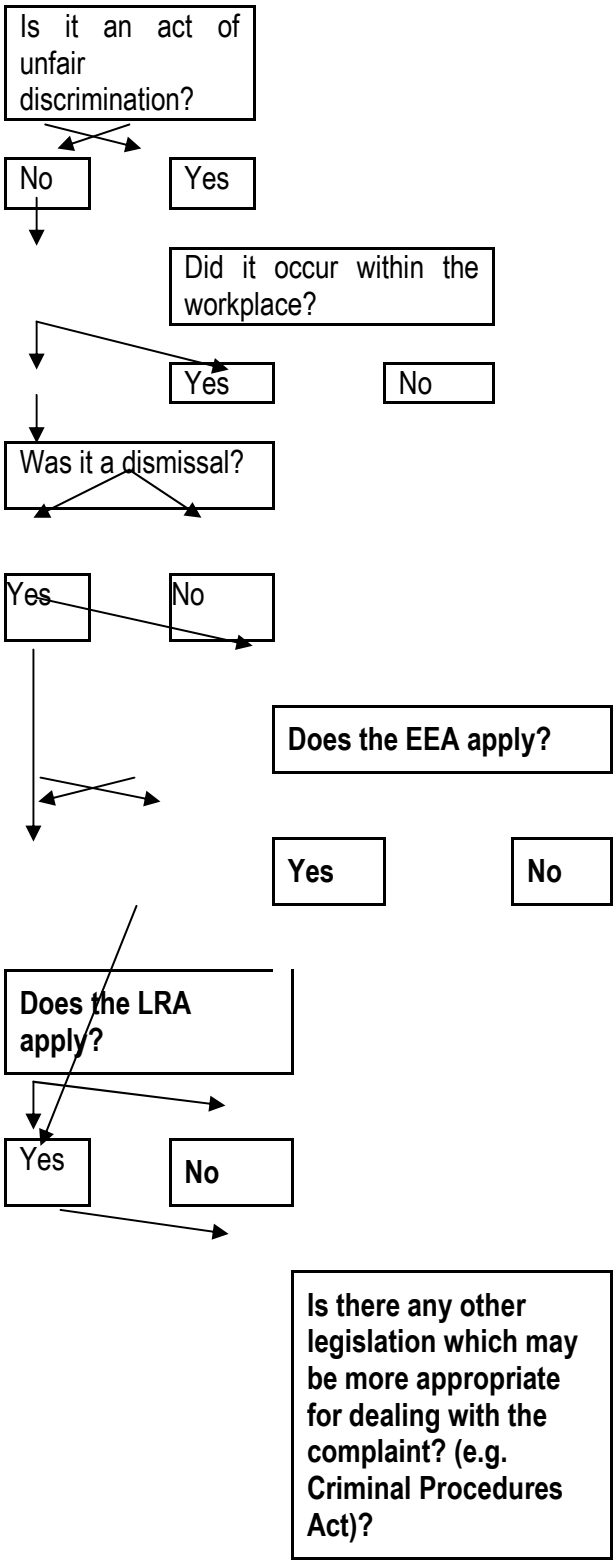
Orders of the equality court have the same status as orders in a civil action and are subject to institution.

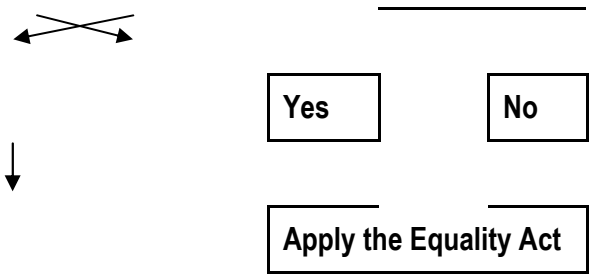
Appeals and reviews

Appeals may be made by any person “aggrieved by any order made by an equality court in terms of or under the Act” (section 23(1)). Appeals lie to the High Court and thereafter to the Supreme Court of Appeal. In certain cases, subject to the rules of the Constitutional Court, an appeal may be made directly to that court.

Reviews to the relevant High Court may be based on a determination relating to a ground of discrimination made in terms of section 23(5)(a).

Deciding when to use the Equality Act




Yes
No
Apply the Equality Act

Wor ksh eet

Identifying the considerations when deciding to use the Equality Act

☞ **Although certain acts of discrimination are not covered by the Equality Act (i.e. those covered by the Employment Equity Act), in many instances acts of discrimination may be covered both by the Equality Act and by other legislation (e.g. discriminatory dismissals are covered both by the Equality Act and the Labour Relations Act). Complainants may therefore have to chose whether to use the Equality Act or other legislation. In making this choice there are a number of factors which complainants should consider. Individually and then in pairs record your responses to the question which follows:**

What factors would you consider when deciding whether to use the Equality Act to deal with a complaint or not?

_____

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Hand out

Considerations when deciding whether to use the Equality Act

The following factors should be considered when deciding whether to use the Equality Act or not:

- the cost of the alternative
- the time it would take to use an alternative route
- the efficacy of the alternative route
- the remedies provided for in the Act
- the different forums which are provided for in the Act
- the relatively informal process of the Act
- the mediation option in the Act

The Promotion of Equality

The Act adopts an approach to equality which is both reactive (prohibiting unfair discrimination) and proactive/substantive (promoting equality). The appropriateness of this approach was confirmed by the Constitutional Court in National Coalition for Gay and Lesbian Equality & another v Minister of Justice & others 1999 (1) SA 6 (CC) at para 62 as follows:

> "Substantive equality is envisaged when s 9(2) unequivocally asserts that equality includes 'the full and equal enjoyment of all rights and freedoms'. The State is further obliged 'to promote the achievement of social equality' by 'legislative and other measures designed to protect or advance persons, or categories of persons, disadvantages by unfair discrimination', which envisages remedial equality."

Relevant provisions giving effect to the promotion of equality as are follows:

24. (1) The State has a duty and a responsibility to promote and achieve equality.
    (2) All persons have a duty and a responsibility to promote equality.

25 (1) The State must, where necessary with the assistance of the relevant constitutional institutions (such as the Human Rights Commission and the Commission on Gender Equality) –(a) develop awareness of fundamental rights in order to promote a climate of understanding, mutual respect and equality;
(b) take measures to develop and implement programmes to promote equality; and
(c).where necessary or appropriate –
- (i) develop action plans to address any unfair discrimination, hate speech or harassment;
- (ii) enact further legislation that seeks to promote equality, and to establish a legislative framework in line with the objectives of the Act;
- (iii) develop codes of practice to promote equality, and develop guidelines, including codes in respect of reasonable accommodation;
- (iv) provide assistance, advice and training on issues of equality;
- (v) develop appropriate internal mechanisms to deal with complaints of unfair discrimination, hate speech and harassment;
- (vi) conduct information campaigns to popularise this Act.

Section 26 provides that persons contracting directly with the state or exercising a public power must promote equality through a number of measures. These include adopting:

- equality plans,
- codes, and
- regulatory mechanisms

In terms of the regulations to the Act, they are also required to monitor progress in implementation of their equality plans and to report on progress to the relevant monitoring authorities.

27. (1) (A)ll persons, non-governmental organisations, community-based organisations and traditional institutions must promote equality in their relationship with other bodies and in their public activities.

In terms of section 27(2) the Minister of Justice *must* develop regulations in terms of the Act; and Other Ministers *may* develop regulations in relation to other Acts to require companies, close corporations, partnerships, clubs, sports organisations, corporate entities and associations to – prepare equality plans, or abide by prescribed codes of practice or report to a body or institution on measures to promote equality.

Section 28 specifically emphasises unfair discrimination on the grounds of race, sex and disability. In terms of section 28(1) if it is proved that unfair discrimination on the grounds of race, sex or gender played a part in a criminal offence, this must be seen as an aggravating factor for the purposes of sentencing.

In terms of Section 28(3)(b), the state and institutions performing public functions must:

(a) audit laws, policies and practices to identify and eliminate discrimination;
(b) develop laws, policies and codes of practice to eliminate discrimination;
(c) adopt action plans to promote and achieve race, gender and disability equality; and
(d) give priority to eliminating unfair discrimination and promoting equality in respect of race, gender and disability.

Worksheet

Final Reflection

☞ **Individually, record your responses to the questions which follow::**

1. What have you learned on this workshop?

2. How will you apply what you have learned?

3. Have you met the learning objectives you set for yourself at the beginning of the workshop?

Resources

Publications

Cathi Albertyn, Beth Goldblatt and Chris Roederer - Introduction to the Promotion of Equality and Prevention of Unfair Discrimination Act

David McQuoid-Mason, Mandla Mchunu, Karthy Govender, Edward O'Brien, Mary Curd Larkin *Democracy for All*

De Waal, Currie and Erasmus "Bill of Rights Handbook", 4th edition

Green Paper on South African Land Policy, 1996

M. Robertson "Land and Post-Apartheid Reconstruction in South Africa"in Bright and Dewar (eds) *Land Law: Themes and Perspectives*, 1998

S. Meer "Introduction" in Meer (ed) *Women, Land and Authority: Perspectives from South Africa*, 1997

SAIRR (1198: 158): Business Day, 10 February 1998

White Paper on South African Land Policy, April 1997

Websites

World Summit declares 'Fault Line' between rich and poor threatens prosperity, adopts broad measures to alleviate poverty, protect environment" at http://www.un.org/events/wssd/summaries/envdevj35.htm accessed on 1 September 2004

Labour Force Survey Key Findings at http://www.statssa.gov.za/keyindicators/lfs.asp accessed on 1 September 2004

Secretarial Report to the 7th National Congress at http://www.cosatu.org.za/congress/cong2000/secr-s-e.htm accessed on 1 September 2004

www.woza.co.za feb02/budget19.htm accessed n 11 September 2003

The Character of Poverty at www.nnp.co.za accessed on 2 September 2004

Being a Man In South Africa at http://www.childrenfirst.org.za/shownews?mode=content&id=22218&refto=4323 accessed on 2 September 2004

Poverty and Corruption: The case of Social Security at http://www.iss.co.za/Pubs/Monographs/No15/Section3.html accessed on 2 September 2004

A Triad of Oppressin on Violence, women and poverty at http://www.csvr.org.za/articles/artgend.htm accessed on 2 September 2004

Fourth World Conference on Women Platform for Action mission statement at www.un.org/womenwatch/dow/beijing/platform/plat1.htm accessed on 26 September 2003.

Cases

Webster v Mitchell 1948 (1) SA 1186 (W)

S v Makwanyane 1995 (3) SA 391 (CC) 104

President of the Republic of South Africa v Hugo1997 (4) SA 1 (CC)

Premier of Mpumalanga v Executive Committee of the Association of Governing Bodies of State-aided Schools: Eastern Transvaal 1999 (2) SA 91 (c)

National Coalition for Gay and Lesbian Equality & Another v Minister of Justice & others 1999 (1) SA 6 (CC)

Bhe v Khayelitshi 2004 (1) BCLR 27 (C)

Legislation

African Charter on Human and People's Rights of 1986

Beijing Platform for Action of 1995

Convention on the Elimination of All Forms of Discrimination against Women of 1979

The Constitution of the Republic of South Africa Act 108 of 1996

The Domestic Violence Act 116 of 1998

Employment Equity Act No 55 of 1998

The Labour Relations Act 66 of 1995

Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa of 1981

The Recognition of Equality and Prevention of Unfair Discrimination Act 4 of 2000

Broad Based Black Economic Empowerment Act 53 of 2003

Mineral and Petroleum Resources Development Act 28 of 2002

South Africans Schools Act 84 of 1996

National Education Policy Act 27 of 1996

Skills Development Act 97 of 1998

Further Education and Training Act 98 of 1998