



National Freedom Day Press Release

27 April 2023.

“What is Freedom if you are Constitutionally Not Free, asks CORMSA”.

This year's National Freedom Day on the 27th April 2023 marks exactly 29 years since the attainment of freedom and transition to democracy in South Africa. This year's national commemoration and celebration will be observed under the theme “**Consolidating and Safeguarding Democratic Gains**”. Historically, this is the 29th anniversary of South Africa's first democratic elections. Freedom Day is commemorated every year to honour those unsung heroes and heroines who fought for freedom and paved the way for an equal, representative, non-racial society. The 1994 elections paved the way towards a new democratic dispensation and a new constitution for the country with the human rights for all, enshrined in it.

Since political freedom in 1994, South Africa has strived to correct the wrongs of the past and this is really commendable and appreciated. However, to this day, the country is still faced with a number of human rights violations and challenges such as, poverty, unemployment, racism, xenophobia, hate crimes, and sexism amongst others. To be free means the enjoyment of all rights and protection as stated within our constitution. As a democratic country, how do we articulate and proudly celebrate **freedom** when refugees, asylum seekers, migrants and locals are still experiencing and witnessing non-protection and human rights violations? Today's society's liberation is shadowed, shelled and amplified through Court battles between the State and its people for people to enjoy their freedom and democracy.

To mention but few Court battles that are playing a key role in liberating our society from injustices aimed against them to not enjoy their freedom and human rights. (1) The Scalabrini Centre of Cape Town (CoRMSA as Amicus Curiae) significant victory against the Minister of Home Affairs in the Western Cape high court, which has declared sections of the Refugees Act unconstitutional. (2) Constitutional Court judgement on Naki case (Centre for Child Law v Director-General Dept. of Home Affairs and Others) declared section 10 of the Births and Deaths Registration Act 51 of 1992 (Act) invalid and inconsistent with the Constitution to the extent that it prohibits an unmarried father from giving notice of the birth of his child under his surname, in the absence of the child's mother or without her consent. (3) Khoza v DHA case where Gauteng High Court handed down a judgment declaring the applicant, a child born in South Africa in 1997 to a mother who was an irregular migrant at the time of his birth (but died while he was a child), and an unknown father, to be a citizen of South Africa on the grounds that he was stateless, and ordering registration of his birth. (4) Komape and Others v Minister of Basic Education where the judge found that the systematic failure to provide decent, safe and adequate toilets infringed the right to human dignity and the right to an environment not harmful to well-being.

Furthermore, (5) SECTION27 and others v MEC, Gauteng Dept. of Health and others case where the Gauteng High Court order that Gauteng regulations and a policy, introduced by the Gauteng Department of Health in 2020, that denies free health care services to pregnant and lactating women and young children who are asylum seekers, undocumented, or persons affected by statelessness are declared unlawful. The Court also declared that any other similar policies or circulars that prevent pregnant and lactating women and children under 6 from accessing free health services are declared inconsistent with the National Health Act and are invalid. And (6) on African Climate Alliance and Others v Minister of Mineral Resources and Energy and Others, the High Court judgement has recognised the poor air quality in South Africa's Mpumalanga Highveld region as a breach of residents' Constitutional right to an environment that is not harmful to their health and well-being. Last but not least, (7) the

current litigation case between Helen Suzman Foundation and Another v Minister of Home Affairs and Another on the Minister's decision to terminate (without consultation) the Zimbabwean Exemption Permit (ZEP) currently documenting and regularising over 170 000 Zimbabwean nationals in SA. If the Minister's decision is upheld, over 170 000 ZEP holders will be undocumented.

In light of the above arguments and illustrations, CoRMSA believes that freedom should be directly accessed and enjoyed by everyone in South Africa as constitutionally endorsed and not through the influence of the Courts. One can also argue that having access to Courts is a freedom on its own, but others will strongly argue and assert that, there is no freedom if you cannot be protected by and directly benefit from it because freedom is the emancipation from the arbitrary rule of other men or systems.

What are we **Consolidating and Safeguarding as Democratic Gains** when people are still not free from oppression, human rights violation and abuse of power by those with power to decide? We call upon the government of South Africa through its respective departmental leaderships to really introspect the constitutionality of their actions towards each and every individual they strive to serve as mandated by the people. South African governments should prove their commitment to respecting and promoting the constitutional rights by strengthening their legal frameworks so that these rights can be fully exercised, including specific measures to ensure that whoever violates or infringes these right is held accountable.

"South Africa cannot afford even through a whisker, to transit from being a worldwide recognised democratic state to a Court state," says Thifuluheli Sinthumule (CoRMSA Director).

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