

STATEMENT OF FACTS

Alfonso is a small island nation which is located a few nautical miles off the coast of the country of Chorizo. In fact, it was a colony of Chorizo till 1999, when the nation declared its independence, forcing the communist government of Chorizo to withdraw from the country.

The tribal history of pre-colonial Alfonso reveals the story of a populace which has traditionally held in high regard the values of law and justice. Soon after its independence, Habanero Xacuti, the first elected Prime Minister of Alfonso and a leader of the erstwhile independence movement set up a Drafting Committee to translate the democratic, liberal and secular vision of a fledgling nation into a Constitution and a set of statutes which would safeguard the rule of law in Alfonso. By 2002, this process had been completed, with provisional statutes being brought into effect. It must be remembered, however, that the Drafting Committee wished to study the working of these statutes for a five year period, following which the statutes would be suitably amended and brought into effect in their final form.

One of the oldest and wealthiest industrial families of Alfonso goes by the name Olifant. None in the Olifant line, however, left behind a more formidable legacy than Vincenzo Olifant, who built Olifant Ltd. (a public company limited by shares) into a pharmaceutical giant of international repute, combining modern biomedical knowledge with traditional remedies drawn from the tropical rainforests of Alfonso.

Vincenzo Olifant died in 2004, leaving the reins of Olifant Ltd. in the hands of his two sons, Ricardo Olifant and Diego Olifant. Ricardo, the elder brother, had studied at Harvard Business School and, on his return, he had become his father's protégé, gradually taking control of the business end of Olifant Ltd. Ricardo had always been a particular favourite of his father, not only because of his business acumen, but also because he had battled a congenital heart defect throughout his life. Diego studied to be a biochemist, combining his degree with a second major in biomedical engineering. He returned to Olifant Ltd. as a lab-assistant, slowly working his way up to a management position, playing a key role in product development and research. Given his qualifications, he was also charged with overseeing industrial safety of the company's industrial facilities.

Both sons started out with 15% of the issued and paid up share capital in Olifant Ltd. When Vincenzo died, he left his 40% shareholding in the company to his elder son, Ricardo, who came to own a controlling stake in the company with his 55% stake. Diego remained a 15% shareholder, with the balance 30% shareholding being held by the general public. By 2005, Ricardo assumed even greater control over Olifant Ltd., as he became the Chairman of the company's Board of Directors.

In 2005, however, both tabloids and business magazines were rife with rumours regarding a rift between the brothers. One tabloid reported an incident which took place at the Olifant Mansion at their annual New Year party, involving an inebriated Ricardo throwing a bottle of champagne at his brother. In February 2005, newspapers reported that Diego had asked Ricardo to leave the Olifant Mansion, which had been willed to Diego by his father. Ricardo, too proud to attempt reconciliation, built himself an enormous city home close to the business district of Xanadu, the capital of Alfonso. In December 2005, Olifant Ltd. expanded its capital base significantly by issuing fresh shares. Ricardo's shareholding increased proportionately, however, and he remained a 55% shareholder in the company. Diego, however, was left with only a 0.5% stake in the company. One business magazine, "Money Matters", carried an article called "Ricardo's Revenge" on the 23rd of December, 2005, an informed piece on how Ricardo Olifant had engineered the dilution of Diego's shareholding.

2nd February, 2006 started out like any other day. Around 2:00 PM, workers at Olifant Ltd.'s main production plant, located at the edge of Xanadu, seemed to smell something in the air which smelt distinctly like freshly cut grass. By 2:45 PM, however, the police, fire brigade and emergency medical services had arrived at the scene, in the wake of the most major industrial accident that Alfonso had ever seen. It emerged that phosgene, once used in chemical warfare, was being used as an industrial reagent in the Olifant plant. A major leakage had occurred at the plant, resulting in the death of 33 factory workers who were on site at the time. Houses in the neighbourhood were saved from the effects of the gas by a stroke of good fortune, as a strong easterly wind blew the gas which had escaped away from the city.

Police also found in the containment unit, used to store dangerous chemicals, the lifeless body of Ricardo Olifant. Trace amounts of phosgene were found in his lungs. As per the post-mortem report, this quantity of phosgene was not adequate to cause the death of a human being. However, the cause of his death was not pulmonary oedema, which is the usual cause of death for human being exposed to phosgene gas. The post-mortem revealed that the cause of death was a heart attack.

When the police reviewed the CCTV footage (which was only video, with no audio), they found material that turned their investigation into a murder investigation. The footage from the camera inside the containment unit showed Ricardo and Diego Olifant entering the containment unit at around 1:30 PM. For the next five minutes, they appeared to have had a heated exchange, after which Diego Olifant appeared to storm out of the unit. Ricardo remained in the room for about two minutes, pacing up and down the room. He then tried to open the door of the containment unit which, it appeared, had been locked from outside, as the CCTV footage showed Ricardo struggling to force the door open. He then started sniffing the air and began inspecting the phosgene cylinders lying on the shelves, until he arrived at one particular cylinder, which he looked at more closely than the others. He took that cylinder and tried to break the door open using that cylinder. He was successful, however, only in breaking the small viewing window on the door of the containment unit. He then threw the cylinder he had been using at the stacks of other phosgene cylinders in the room, which cascaded and fell. Almost immediately, as if he was suffocating, he began opening the top buttons of his T-shirt, and, clutching his chest, he collapsed on the floor.

What was even more interesting was that someone had deleted the CCTV footage for the corresponding period of time in respect of the cameras located directly outside the containment unit [Pertinently, Diego Olifant's access code had been used to access the company's mainframe several times in the 24 hours following the incident]. The footage from the cameras located in the parking lot of the Olifant plant, however, showed Diego Olifant leaving the premises at about 1:40 PM. The police also reviewed the footage from the containment unit earlier in the day, which revealed that Diego had entered the unit at about 1:00 PM with a clipboard, seemingly for an inspection. He had handled one particular cylinder of phosgene, but it was unclear from the CCTV footage as to what exactly he did with this cylinder.

Investigation inside the containment unit revealed that the very same cylinder which had been thrown by Ricardo also had Diego's fingerprints all over it. In particular, Diego's fingerprints were found near the valve of the cylinder. The pressure on the valve had been released slightly, in a manner which would have allowed a small amount of gas to escape.

On 5th February 2006, Diego was arrested for the murder of his brother, and the trial began soon afterwards. In his statement to the police, he admitted to having locked the door behind him when he left the containment unit on the afternoon of 2nd February, 2006. He

did not, however, admit to having released the valve on any phosgene cylinder. He also did not admit to deleting any CCTV footage.

Simultaneously, however, a social action group called "People Power" took it upon itself to bring Olifant Ltd. to justice for flagrantly overlooking internationally accepted industrial safety standard. It elicited public records (using the Right to Information Act which had recently been enacted in Alfonso in January 2006) regarding Olifant Ltd.'s corporate policies and resolutions. Apart from the fact that a negligible quantum of the company's funds were spent on industrial safety, it was found that the company's Board of Directors had, from time to time, approved industrial safety codes for its facilities formulated by Diego Olifant with minimal deliberation. These norms, formulated by Diego Olifant, were woefully inadequate compared to international best practices to be followed by companies using dangerous gases and chemicals. On the strength of such material, People Power instituted a complaint with the State police, which launched a parallel investigation against Olifant Ltd.

Diego Olifant was indicted and tried for the murder of his brother Ricardo Olifant, and for the charges of murder and manslaughter in respect of the 33 dead factory workers who died due to phosgene poisoning.

A separate prosecution was launched against public officials for failing to ensure compliance with internationally accepted industrial safety standards (which is pending till date). The public officials arraigned as accused claim, in a nutshell, that no such industrial standards have been codified in Alfonso,, and therefore, they cannot be held liable.

Olifant Ltd. was indicted and tried for manslaughter. In the course of trial, the star prosecution witness was an official from the World Health Organization, who detailed Olifant Ltd.'s shortcomings in respect of industrial safety, most particularly in its handling of phosgene. In his deposition, he stated, for example, that the containment unit which had been used to hold the phosgene containers was woefully inadequate, as it was like any other room in the building, except that it had a reinforced door. Phosgene gas, as per the expert, should be stored in a separate sealed structural enclosure, with an air tight seal, maintained under vacuum, where access was controlled, and with dedicated leak detection monitors. The expert also noted that the valves of the cylinder were inadequate as per accepted international safety standards, and the cylinders themselves were repeatedly used without adequate testing. In addition, phosgene cylinders, during storage or transportation, should be secured or lashed in a manner which would prevent them from falling. The expert

opined that a major contributor to the accident was the fact of the cylinders not being secured, which resulted in them falling and consequently causing a large scale phosgene leakage. In addition, the valves were not properly designed, and were not tested for leakage and durability. As a result, the impact cause by the cylinders falling to the ground also contributed to the leakage of phosgene gas, as per the expert.

On 9th November, 2006, Diego was found guilty of murdering his brother. The trial court found merit in the prosecution's case, which was that Diego had entered the containment unit in advance, tampered with the valve of one phosgene cylinder and engineered a situation where he could lock his brother into the containment, hence causing his death. He was, however, acquitted of the charge of manslaughter in connection with the death of the factory workers. Diego Olifant was sentenced to undergo life imprisonment.

On 3rd December, 2006, Olifant Ltd. was found guilty of manslaughter, having indirectly caused the death of its 33 factory workers. Its omissions, and the negligence and recklessness displayed, weighed with the trial court in rendering its verdict. It was fined 33 million Alfonsian dollars for the crime of manslaughter.

Both Diego Olifant and Olifant Ltd. have moved the Court of Appeal. Their appeals are currently pending adjudication. The scope of appeal, as per the Provisional Code of Criminal Procedure, allows the Court of Appeal to enter into questions of fact as also questions of law.

In the appellate proceeding entitled *Diego Olifant v. The State*, two principles issues have been raised by the Appellant:-

1. That the *actus reus* necessary for murder is absent in the instant case, as Diego Olifant did not cause the death of his brother, Ricardo Olifant.
2. That the *mens rea* required for murder is absent in the facts of the case.

In the appellate proceedings entitled *Olifant Ltd. v. The State*, three principles issues have been raised:-

1. That the requisite *mens rea* required for manslaughter is absent in the instant case.
2. That a company cannot be attributed with *mens rea*.

3. That even if a company can be attributed with *mens rea*, the company has been incorrectly attributed with the *mens rea* of its functionaries in the instant case. [In other words, the rules of attribution have been applied incorrectly.]

Parties wishing to raise additional issues may do so in their submission before the Court of Appeal.

Both the appeals have been consolidated and shall be heard together, as they are in respect of the same incident.

NOTE:

1. Teams are to argue either for the Appellants (namely Diego Olifant, as also Olifant Ltd.) or the Respondent (The State).
2. Trials in Alfonso are conducted by a magistrate without the aid of a jury.
3. The onus of proof, needless to say, in a criminal trial in Alfonso, is on the prosecution to demonstrate the guilt of the accused beyond reasonable doubt.
4. It must be remembered that Alfonso's statutes are not fully developed. This trial would serve in contributing to the final form of Alfonso's laws. There is no binding precedent in Alfonso regarding the issues which arise in the above fact situation. Decisions rendered in **ALL** common law jurisdictions, however, may be persuasive. Participants are expected to interpret the statutes appended to this problem (if found relevant) and apply them to the facts of the case, and convince judges regarding the applicability of precedents cited. Participants are expected to apply principles of criminal law prevalent in common law jurisdictions and demonstrate the rationale and desirability of applying the same in a cogent manner.
5. The Right to Information Act, 2006 in force in Alfonso is similar to the Right to Information Act, 2005 which is in force in India.
6. There is no statute codifying evidentiary principles in Alfonso. Participants are encouraged to refer to established common law principles on evidence for the purpose of argument, with reference to universally recognized treatises like "Wigmore on Evidence".

ANNEXURE A

THE PROVISIONAL PENAL CODE OF ALFONSO, 2002

(relevant extracts)

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...

293 Definition of killing

Except as hereinafter set forth, any person who causes the death of another, directly or indirectly, by any means whatever, is deemed to have killed that other person.

...

296 Acceleration of death

A person who does any act or makes any omission which hastens the death of another person who, when the act is done or the omission is made, is labouring under some disorder or disease arising from another cause, is deemed to have killed that other person.

...

300 Unlawful homicide

Any person who unlawfully kills another is guilty of a crime, which is called murder or manslaughter, according to the circumstances of the case.

...

302 Definition of murder

(1) Except as hereinafter set forth, a person who unlawfully kills another under any of the following circumstances, that is to say--

(a) if the offender intends to cause the death of the person killed or that of some other person or if the offender intends to do to the person killed or to some other person some grievous bodily harm;

(b) if death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life;

(c) if the offender intends to do grievous bodily harm to some person for the purpose of facilitating the commission of a crime which is such that the offender may be arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such crime;

(d) if death is caused by administering any stupefying or overpowering thing for either of the purposes mentioned in paragraph (c);

(e) if death is caused by wilfully stopping the breath of any person for either of such purposes;

is guilty of murder.

(2) Under subsection (1)(a) it is immaterial that the offender did not intend to hurt the particular person who is killed.

(3) Under subsection (1)(b) it is immaterial that the offender did not intend to hurt any person.

(4) Under subsection (1)(c) to (e) it is immaterial that the offender did not intend to cause death or did not know that death was likely to result.

303 Definition of manslaughter

A person who unlawfully kills another under such circumstances as not to constitute murder is guilty of manslaughter.

...

305 Punishment of murder

(1) Any person who commits the crime of murder is liable to imprisonment for life, which cannot be mitigated or varied under this Code or any other law.

(2) If the person is being sentenced--

(a) on more than 1 conviction of murder; or

(b) on 1 conviction of murder and another offence of murder is taken into account; or

(c) on a conviction of murder and the person has on a previous occasion been sentenced for another offence of murder;

the court sentencing the person must make an order that the person must not be released from imprisonment until the person has served a minimum of 20 or more specified years of imprisonment.

(3) Subsection (2)(c) applies whether the crime for which the person is being sentenced was committed before or after the conviction for the other offence of murder mentioned in the paragraph.

...

310 Punishment of manslaughter

Any person who commits the crime of manslaughter is liable to imprisonment for life, or with fine, or both.

ANNEXURE B**THE PROVISIONAL CRIMINAL PROCEDURE CODE OF ALFONSO, 2002**

(relevant extracts)

...

*Appeal against conviction or sentence***383 Right of appeal against conviction or sentence**

(1) Any person convicted on indictment may appeal to the Court of Appeal or, with the leave of the Supreme Court, to the Supreme Court against—

- (a) the conviction; or
- (b) the sentence passed on the conviction (unless the sentence is one fixed by law); or
- (c) both.

(2) The Solicitor-General, with the leave of the court appealed to, may appeal to the Court of Appeal or the Supreme Court against the sentence passed on the conviction of any person on indictment, unless the sentence is one fixed by law.

(3) Every appeal under subsection (2) against a sentence of detention which is not heard before the date on which the person convicted has completed serving that sentence shall lapse on that date, and thereupon the appeal shall be deemed to have been dismissed by the court concerned for non-prosecution.

(4) For the purposes of an appeal under subsection (2), the term **sentence** shall include any method of disposing of a case following conviction.

383A Appeal against decision of Court of Appeal on appeal against conviction or sentence

(1) With the leave of the Supreme Court, a convicted person may appeal to the Supreme Court against a decision of the Court of Appeal on appeal under section 383.

(2) With the leave of the Supreme Court, the Solicitor-General may appeal to the Supreme Court against a decision of the Court of Appeal on appeal under section 383(2).

(3) If an appeal under subsection (1) or subsection (2) against a sentence of detention is not heard before the date on which the convicted person has completed serving the sentence, on that date the appeal lapses, and must be treated as having been dismissed by the Supreme Court for non-prosecution.

(4) For the purposes of subsection (2), **sentence** includes any method of disposing of a case following conviction.

....

385 Determination of appeals in ordinary cases

(1AA) This subsection applies to—

- (a) an appeal to the Supreme Court or the Court of Appeal against conviction:

(b) an appeal to the Supreme Court against a decision of the Court of Appeal on appeal under section 383 against conviction.

On any appeal to which subsection (1AA) applies, the Court of Appeal or the Supreme Court must allow the appeal if it is of opinion—

- (a) that the verdict of the Trial Court should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence; or
- (b) that the judgment of the court before which the appellant was convicted should be set aside on the ground of a wrong decision on any question of law; or
- (c) that on any ground there was a miscarriage of justice; or
- (d) that the trial was a nullity—

and in any other case shall dismiss the appeal:

provided that the Court of Appeal or the Supreme Court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

Subject to the special provisions of this Part, the Court of Appeal or the Supreme Court must, if it allows an appeal to which subsection (1AA) applies, quash the conviction and in its discretion direct a judgment and verdict of acquittal to be entered, or direct a new trial, or make such other order as justice requires.

(2A) This subsection applies to—

- (a) an appeal to the Supreme Court or the Court of Appeal against sentence:
- (b) an appeal to the Supreme Court against a decision of the Court of Appeal on appeal under section 383 against sentence.

On any appeal to which subsection (2A) applies, the Court of Appeal or the Supreme Court must—

- (a) dismiss the appeal; or
- (b) if it thinks that a different sentence should have been passed,—
 - (i) quash the sentence and replace it with another sentence warranted in law (whether more or less severe) that the court thinks ought to have been passed; or
 - (ii) vary, within the limits warranted in law, the sentence or any part of it or any condition imposed in it; or
- (c) remit the case to the court that imposed the sentence with a direction that such court take an action of the kind described in paragraph (b)(i) or (ii) in accordance with any directions given by the Court of Appeal or the Supreme Court as the case may be.

...

388 Time for appealing

(1) Where a person convicted desires to appeal to the Court of Appeal against his conviction or sentence, or to obtain the leave of that court so to appeal, or where the Solicitor-General desires to obtain the leave of the Court of Appeal to appeal against the sentence passed on the conviction of any person on indictment, he shall give notice of appeal or notice of his application for leave to appeal in such manner as may be directed by rules of court within 28 days after the date of conviction or (if the convicted person is

not sentenced on the date of conviction) at any time after the conviction, but not later than 28 days after the date of sentence.

389 Supplemental powers of appellate courts

For the purposes of any appeal or application for leave to appeal against conviction or sentence the Court of Appeal or the Supreme Court may, if it thinks it necessary or expedient in the interests of justice,—

(a) order the production of any document, exhibit, or other thing connected with the proceedings the production of which appears to the court to be necessary for the determination of the case:

(b) if it thinks fit, order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in manner provided by rules of court before any Judge of the court or before any officer of the court or District Court Judge or other person appointed by the Court of Appeal or the Supreme Court for the purpose, and allow the admission of any depositions so taken as evidence before the court:

(c) if it thinks fit, receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness, and, if the appellant makes an application for the purpose, of the husband or wife of the appellant, in cases where the evidence of the husband or wife could not have been given at the trial except on such application:

(d) where any question arising on the appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in the opinion of the court conveniently be conducted before the court, order the reference of the question in manner provided by rules of court for inquiry and report to a special commissioner appointed by the court, and act upon the report of any such commissioner so far as the court thinks fit to adopt it:

(e) appoint any person with special expert knowledge to act as assessor to the court in any case where it appears to the court that such special knowledge is required for the proper determination of the case—

and exercise in relation to the proceedings of the court any other powers which may for the time being be exercised by the Court of Appeal or the Supreme Court on appeals in civil matters, and issue any warrants necessary for enforcing the orders or sentences of the court:

provided that in no case shall any sentence be increased by reason of or in consideration of any evidence that was not given at the trial.

390 Duty of Solicitor-General

(1) It is the duty of the Solicitor-General to—

(a) represent the State on every appeal against conviction or sentence; and
(b) appear at every hearing involving oral submissions on an appeal or application for leave to appeal under this Part.

(2) The Solicitor-General's duties under subsection (1)—

(a) may be performed by any other counsel employed or engaged by the State; and

(b) do not apply in the case of a private prosecution.

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General provisions as to appeals

392A Decision about mode of hearing

(1) An appeal or application for leave to appeal must be dealt with by way of a hearing involving oral submissions unless the Judge or court making the decision on the mode of hearing determines, on the basis of the information contained in the notice of appeal, notice of application, or other written material provided by the parties, that the appeal or application—

(a) can be fairly dealt with on the papers; and

(b) either has no realistic prospect of success or clearly should be allowed.

(2) In determining whether an appeal or application can be fairly dealt with on the papers, the Judge or court may consider any matters relevant to the decision on the mode of hearing, including such matters as—

(a) whether the appellant has been assisted by counsel in preparing the appeal or application:

(b) whether the appellant has been provided with copies of the relevant trial documentation:

(c) the gravity of the offence:

(d) the nature and complexity of the issues raised by the appeal or application:

(e) whether evidence should be called:

(f) any relevant cultural or personal factors.

(3) A Judge of the Court of Appeal, acting alone, may make a decision about the mode of hearing a particular appeal or application, but no Judge acting alone may reverse a decision on mode that has been made by the court.

(4) The Court of Appeal may, at any time, either on its own initiative or on the application of any party, change the mode of hearing a particular appeal or application to an oral hearing, having regard to any written submissions made by the parties concerning the mode of hearing.

(5) The court or Judge making the decision on the mode of hearing must apply section 392B(2) to (5) (with all necessary modifications) in the same way as the court would apply them in determining an appeal or application for leave to appeal.

(6) Every decision about the mode of hearing an appeal or application must be in writing, be accompanied by reasons (unless the decision is that the hearing will be an oral hearing), and be provided by the Registrar to the parties.

(7) This section does not apply to an application to the Supreme Court for leave to appeal to it.

392B Hearings on the papers

(1) This section applies to appeals and applications for leave to appeal that are disposed of by the Court of Appeal by way of a hearing on the papers.

- (2) The parties to the appeal or application may make written, but not oral, submissions to the court, and may include in their submissions—
- (a) additional relevant written material; and
 - (b) responses to any submissions made by the other party.
- (3) Neither the parties nor their representatives may appear before the court.
- (4) The appeal or application must be determined by the court on the basis of the written material before it.
- (5) Consideration of the written material may be undertaken in whatever manner the court thinks fit.
- (6) Paragraphs (b), (c), (d), and (e) of section 389 do not apply.

...

394 Evidence for appellate courts

- (1) On any appeal or application for leave to appeal under this Act the court before which the appellant was convicted shall, if it thinks necessary or if the Court of Appeal or the Supreme Court so desires, send to the Court of Appeal or the Supreme Court a copy of the whole or of such part as is material of the notes taken by the Judge presiding at the trial.
- (2) The Court of Appeal or the Supreme Court may, if it considers the notes defective, refer to such other evidence of what took place at the trial as it thinks fit.

395 Right of appellant to be represented, and restriction on attendance

- (1) At the hearing of an appeal, or an application for leave to appeal, or on any proceedings preliminary or incidental to an appeal or application, the appellant may be represented by counsel.
- (1A) If an appellant is in custody, he or she is not entitled to be present at a hearing involving oral submissions unless—
 - (a) the rules of court provide that he or she has the right to be present; or
 - (b) the Court of Appeal gives leave for him or her to be present.
 - (2) The power of the Court of Appeal to pass any sentence under this Act may be exercised, notwithstanding that the appellant is for any reason not present.
 - (3) Subsections (1A) and (2) do not apply to—
 - (a) an appeal to the Supreme Court; or
 - (b) an application for leave to appeal to the Supreme Court.

398 Judgment of Court of Appeal

- (1) Every judgment of the Court of Appeal on an appeal or application under this Part (other than one relating to a preliminary or incidental matter) must be accompanied by reasons.

399 Intermediate effects of appeal

(1) Except as otherwise provided in this Act or in rules of court, no sentence shall be suspended by reason of any appeal under this Part, unless the court expressly so directs.

ANNEXURE C**THE CONSTITUTION OF ALFONSO**

(relevant extracts)

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CHAPTER IV - BILL OF RIGHTS**7. Rights**

1. This Bill of Rights is a cornerstone of democracy in Alfonso. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.
2. The state must respect, protect, promote and fulfil the rights in the Bill of Rights.
3. The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill.

8. Application

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 to the extent that, it is applicable, taking into account the nature of the right 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 in terms 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).

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.

9. Equality

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. ^{*1}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.

10. Human dignity

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

11. Life

Everyone has the right to life.

12. Freedom and security of the person

1. Everyone has the right to freedom and security of the person, which includes the right
 - a. not to be deprived of freedom arbitrarily or without just cause;
 - b. not to be detained without trial;
 - c. to be free from all forms of violence from either public or private sources;
 - d. not to be tortured in any way; and
 - e. not to be treated or punished in a cruel, inhuman or degrading way.
2. Everyone has the right to bodily and psychological integrity, which includes the right
 - a. to make decisions concerning reproduction;
 - b. to security in and control over their body; and
 - c. not to be subjected to medical or scientific experiments without their informed consent.

13. Slavery, servitude and forced labour

No one may be subjected to slavery, servitude or forced labour.

14. Privacy

Everyone has the right to privacy, which includes the right not to have

- a. their person or home searched;
- b. their property searched;
- c. their possessions seized; or
- d. the privacy of their communications infringed.

15. Freedom of religion, belief and opinion

1. Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
2. Religious observances may be conducted at state or state-aided institutions, provided that
 - a. those observances follow rules made by the appropriate public authorities;
 - b. they are conducted on an equitable basis; and
 - c. attendance at them is free and voluntary.
3.
 - a. This section does not prevent legislation recognising
 - i. marriages concluded under any tradition, or a system of religious, personal or family law; or
 - ii. systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.
 - b. Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.

16. Freedom of expression

1. Everyone has the right to freedom of expression, which includes
 - a. freedom of the press and other media;
 - b. freedom to receive or impart information or ideas;
 - c. freedom of artistic creativity; and
 - d. academic freedom and freedom of scientific research.
2. The right in subsection (1) does not extend to
 - a. propaganda for war;
 - b. incitement of imminent violence; or
 - c. advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

17. Assembly, demonstration, picket and petition

Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.

18. Freedom of association

Everyone has the right to freedom of association.

19. Political rights

1. Every citizen is free to make political choices, which includes the right
 - a. to form a political party;
 - b. to participate in the activities of, or recruit members for, a political party; and
 - c. to campaign for a political party or cause.
2. Every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution.
3. Every adult citizen has the right

- a. to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and
- b. to stand for public office and, if elected, to hold office.

20. Citizenship

No citizen may be deprived of citizenship.

21. Freedom of movement and residence

1. Everyone has the right to freedom of movement.
2. Everyone has the right to leave the Republic.
3. Every citizen has the right to enter, to remain in and to reside anywhere in, the Republic.
4. Every citizen has the right to a passport.

22. Freedom of trade, occupation and profession

Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.

23. Labour relations

1. Everyone has the right to fair labour practices.
2. Every worker has the right
 - a. to form and join a trade union;
 - b. to participate in the activities and programmes of a trade union; and
 - c. to strike.
3. Every employer has the right
 - a. to form and join an employers' organisation; and
 - b. to participate in the activities and programmes of an employers' organisation.
4. Every trade union and every employers' organisation has the right
 - a. to determine its own administration, programmes and activities;
 - b. to organise; and
 - c. to form and join a federation.
5. Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).
6. National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).

24. Environment

Everyone has the right

- a. to an environment that is not harmful to their health or well-being; and
- b. to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that
 - i. prevent pollution and ecological degradation;
 - ii. promote conservation; and
 - iii. secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

25. Property

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
 - a. the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all of the nation's natural resources; and
 - b. 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(6).

26. Housing

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.

27. Health care, food, water and social security

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.

28. Children

1. Every child has the right
 - a. to a name and a nationality from birth;
 - b. to family care or parental care, or to appropriate alternative care when removed from the family environment;
 - c. to basic nutrition, shelter, basic health care services and social services;
 - d. to be protected from maltreatment, neglect, abuse or degradation;
 - e. to be protected from exploitative labour practices;
 - f. not to be required or permitted to perform work or provide services that
 - i. are inappropriate for a person of that child's age; or
 - ii. place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
 - g. not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be
 - i. kept separately from detained persons over the age of 18 years; and
 - ii. treated in a manner, and kept in conditions, that take account of the child's age;
 - h. to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and
 - i. not to be used directly in armed conflict, and to be protected in times of armed conflict.
2. A child's best interests are of paramount importance in every matter concerning the child.
3. In this section "child" means a person under the age of 18 years.

29. Education

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
 - 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.

30. Language and culture

Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.

31. Cultural, religious and linguistic communities

1. Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community
 - a. to enjoy their culture, practise their religion and use their language; and
 - b. to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.
2. The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

32. Access to information

1. Everyone has the right of access to
 - a. any information held by the state; and
 - b. any information that is held by another person and that is required for the exercise or protection of any rights.

2. National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

33. Just administrative action

1. Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
2. Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.
3. National legislation must be enacted to give effect to these rights, and must
 - a. provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;
 - b. impose a duty on the state to give effect to the rights in subsections (1) and (2); and
 - c. promote an efficient administration.

34. Access to courts

Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

35. Arrested, detained and accused persons

1. Everyone who is arrested for allegedly committing an offence has the right
 - a. to remain silent;
 - b. to be informed promptly
 - i. of the right to remain silent; and
 - ii. of the consequences of not remaining silent;
 - c. not to be compelled to make any confession or admission that could be used in evidence against that person;
 - d. to be brought before a court as soon as reasonably possible, but not later than
 - i. 48 hours after the arrest; or
 - ii. the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day;
 - e. at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and
 - f. to be released from detention if the interests of justice permit, subject to reasonable conditions.
2. Everyone who is detained, including every sentenced prisoner, has the right
 - a. to be informed promptly of the reason for being detained;
 - b. to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;

- c. to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
 - d. to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
 - e. to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and
 - f. to communicate with, and be visited by, that person's
 - i. spouse or partner;
 - ii. next of kin;
 - iii. chosen religious counsellor; and
 - iv. chosen medical practitioner.
3. Every accused person has a right to a fair trial, which includes the right
 - a. to be informed of the charge with sufficient detail to answer it;
 - b. to have adequate time and facilities to prepare a defence;
 - c. to a public trial before an ordinary court;
 - d. to have their trial begin and conclude without unreasonable delay;
 - e. to be present when being tried;
 - f. to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;
 - g. to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
 - h. to be presumed innocent, to remain silent, and not to testify during the proceedings;
 - i. to adduce and challenge evidence;
 - j. not to be compelled to give self-incriminating evidence;
 - k. to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;
 - l. not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;
 - m. not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
 - n. to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
 - o. of appeal to, or review by, a higher court.
4. Whenever this section requires information to be given to a person, that information must be given in a language that the person understands.
5. Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.

36. Limitation of rights

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.

37. Enforcement of rights

Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are -

- a. anyone acting in their own interest;
- b. anyone acting on behalf of another person who cannot act in their own name;
- c. anyone acting as a member of, or in the interest of, a group or class of persons;
- d. anyone acting in the public interest; and
- e. an association acting in the interest of its members.

38. Interpretation of Bill of Rights

1. When interpreting the Bill of Rights, a court, tribunal or forum
 - a. must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
 - b. must consider international law; and
 - c. may consider foreign law.
2. When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.
3. The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill.

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