



YOU AND THE CONSTITUTION





PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

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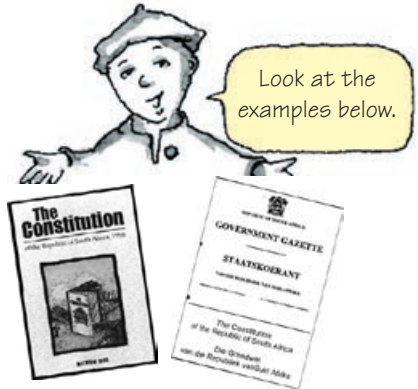
NOTE: WORDS WHICH HAVE A MARK LIKE THIS * NEXT TO THEM THE FIRST TIME THEY ARE USED ARE EXPLAINED AT THE BACK OF THIS BOOKLET.

PART ONE

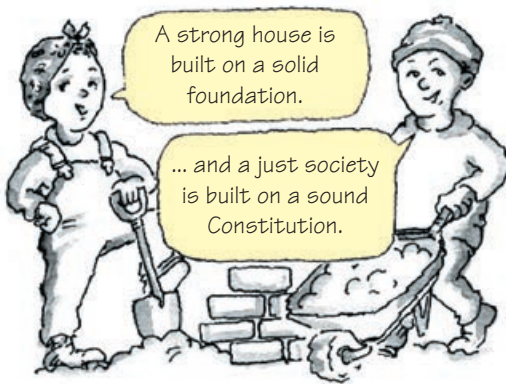
ORIENTATION

1. WHAT IS THE CONSTITUTION?

- The Constitution is the highest law of South Africa. (Supreme law)
- It must be followed by the State and all people of South Africa.
- It sets out the structures and powers of the State.
- It protects your rights by establishing institutions* empowered to ensure your rights are not violated.



All other laws in the country must be in line with the Constitution.



The Constitution does not replace other laws. It sets out the standards which laws must follow. It serves as the foundation of a house. The walls, windows, doors and roof of the house are other laws.

When you build a house, the strength of the house depends on the foundation.

So too, all other laws in the country depend on what the Constitution says.

EXAMPLE

Workers' rights are protected in Chapter 2 of the Constitution. But these are not the only rights workers have. Instead, most of the law about workers is in the Labour Relations Act and the Basic Conditions of Employment Act. But any law written about workers must follow the Constitution and cannot take away the rights given to workers in the Constitution.

2. AMENDING THE CONSTITUTION

Parliament* can amend laws if more than fifty percent of the MPs are present and the majority of that supports the change. This is also sometimes called a simple majority. The Constitution needs a much higher percentage vote to change it. To do so, at least two-thirds of the MPs must agree to the amendments.

More about Parliament on page 22



To amend most laws, just over half of the Members in the NA must be present, and five provinces in the NCOP must vote in favour.

To amend the Constitution, at least two thirds of the Members of the NA must agree. In the NCOP at least six provinces must vote in favour.



The Constitution remains the same even if government changes. The Constitution ensures that there will always be democracy in South Africa.

3. WHAT IS DEMOCRACY?



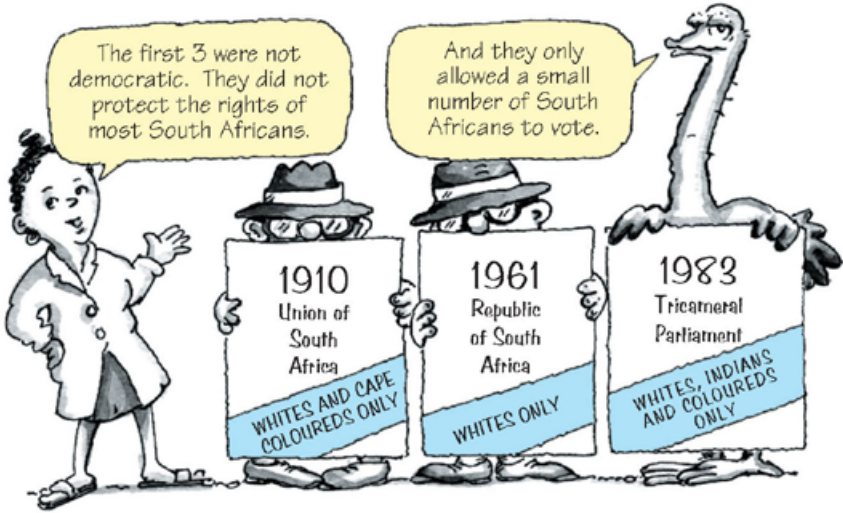
Democracy does not mean everyone can vote

For example, most countries do not allow children or mentally ill people to vote.

Democracy is a way of governing a country. It is based on the idea that everyone in a country should have a say about how the country is run. Because it is not possible for everyone to be in Parliament, people choose other people to represent them in Parliament and to make decisions on their behalf. These representatives are chosen during an election when people vote for a political party they believe best represents them.

4. WHY A CONSTITUTION IS IMPORTANT

The current Constitution is the fourth South African constitution.



Before democratic elections could be held in April 1994, a new Constitution had to be written. This was the **Interim Constitution** of 1993.

The Interim Constitution was written by people who had not yet been democratically elected into government. It was agreed that the Interim Constitution would be a temporary Constitution.

The **new Constitution** would be written in 1994 by the elected government of South Africa.



The Interim Constitution set up the **Constitutional Assembly (CA)** to write the new Constitution. But the CA did not write the new Constitution alone. All South Africans were invited to say what they thought should be in the new Constitution.

PART TWO

OVERVIEW

PREAMBLE

This is the introduction to the Constitution.

CHAPTER 1 — FOUNDING PROVISIONS

This contains the basic ideas behind the Constitution; the national symbols; and the official languages.

CHAPTER 2 — BILL OF RIGHTS

These are the human rights that are protected.

CHAPTER 3 — CO-OPERATIVE GOVERNMENT

This Chapter states that government in South Africa has three spheres: a national sphere, a provincial sphere, and a local sphere. It also says how the national, provincial and local spheres of government must work together.

CHAPTER 4 — PARLIAMENT

Parliament is the part of the State which passes new, and amends existing, national laws. It consists of the National Assembly (NA) and the National Council of Provinces (NCOP).

CHAPTER 5 — THE PRESIDENT AND NATIONAL EXECUTIVE

The National Executive is the part of the State, which puts laws passed by Parliament into operation. The President is the head of the National Executive.

CHAPTER 6 — PROVINCES

This Chapter states how the provincial legislatures and executives are made up and how they function. It deals with provincial constitutions. It also sets out the areas over which both the national government and the provincial government may make laws and states what happens if these laws contradict each other.

CHAPTER 7 — LOCAL GOVERNMENT

This Chapter explains how local government is comprised, what powers it has, and what it must do.

CHAPTER 8 — COURTS AND ADMINISTRATION OF JUSTICE

This Chapter deals with courts in South Africa, what powers they have, and how judges are appointed.

CHAPTER 9 — STATE INSTITUTIONS SUPPORTING CONSTITUTIONAL DEMOCRACY

This Chapter sets up institutions to make sure that the State fulfills its function to help protect human rights.

CHAPTER 10 — PUBLIC ADMINISTRATION

This Chapter sets out the principles which govern Public Administration and people who are employed by the State.

CHAPTER 11 — SECURITY SERVICES

This Chapter deals with the police, army and intelligence services. It states how these must work and ensures that they act properly.

CHAPTER 12 — TRADITIONAL LEADERS

This Chapter deals with traditional leaders.

CHAPTER 13 — FINANCE

To make sure that the money raised by the State is used properly, this Chapter sets out rules that must be followed. It sets up the Financial and Fiscal Commission. It also makes provision for a Central Bank.

CHAPTER 14 — GENERAL PROVISIONS

This Chapter contains provisions about international agreements and customary international law and how these apply in South Africa.

SCHEDULE 1

This states what the South African flag looks like and how it is to be displayed.

SCHEDULE 2

This has the oaths of office and solemn affirmations which the President, Deputy President, Members of Parliament and other Constitutional office bearers must take before they assume office.

SCHEDULE 3

This deals with how the President, Premiers, Chairperson of the National Council of Provinces, Deputy Chairperson of the National Council of Provinces, Speakers* and Deputy Speakers are elected.

SCHEDULE 4

This is a list of the areas for which both the national and provincial governments can pass laws, like health services and housing.

SCHEDULE 5

This is a list of the areas for which only provincial governments can pass laws, like markets and refuse removal.

SCHEDULE 6

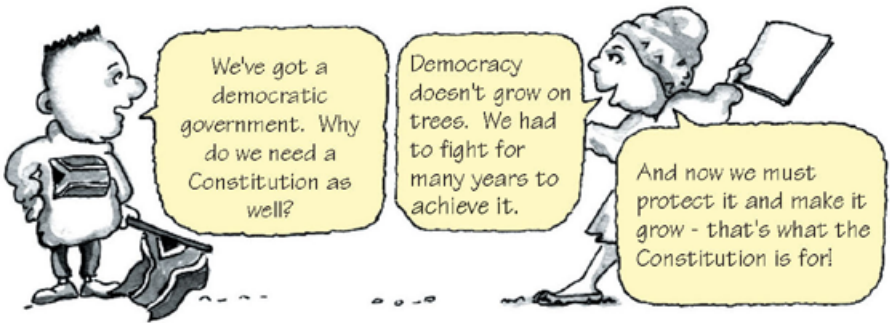
This deals with the changes that needed (and still need) to happen to allow the Constitution to take effect.

SCHEDULE 7

This states what laws are replaced by the Constitution.

PART THREE

PROTECTING DEMOCRACY AND YOUR RIGHTS

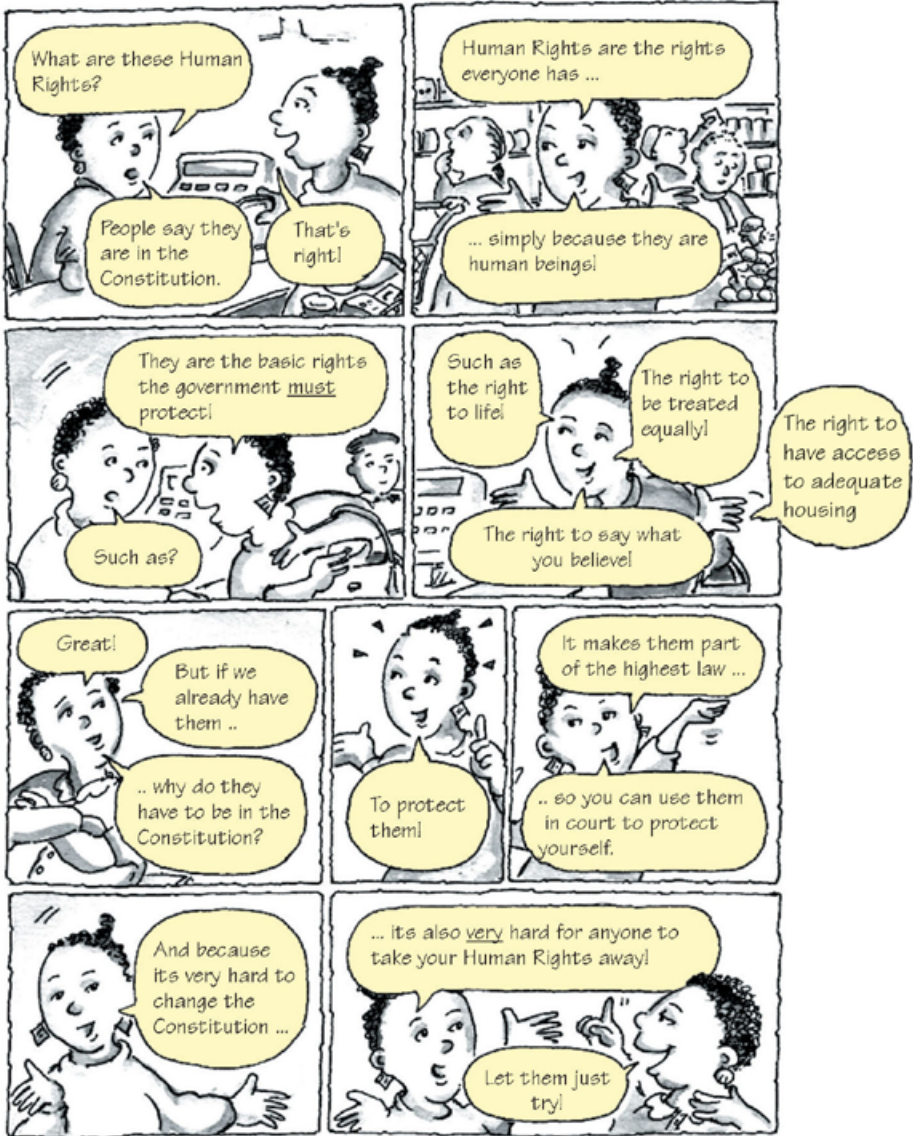


To protect democracy and prevent abuse of power, the Constitution:

- states fundamental human rights in the chapter on the **Bill of Rights**, and therefore protects these rights;
- states when **elections** must occur and ensures elections happen regularly;
- ensures that power is separated between different parts of government so that no part has too much power. This is also called the **Separation of Powers**;
- sets up national, provincial and local government, which are collectively called **spheres** of government. These spheres of government work to ensure that the country is run properly and that government is close to the people it serves. It also ensures that there is a clear balance of power and that each part of the State knows what powers it has;
- sets up a **Constitutional Court**, which has the final say about what the Constitution means, and which can declare laws passed by Parliament invalid if they are not in line with the Constitution;
- sets up **independent institutions** to educate you about your rights, and to protect your rights; and
- makes sure that the **police, army and intelligence services** protect South Africa and its people.

1. THE BILL OF RIGHTS

Chapter 2 of the Constitution contains the Bill of Rights which includes socio-economic rights, political rights and civil rights - these are all human rights and are therefore protected.

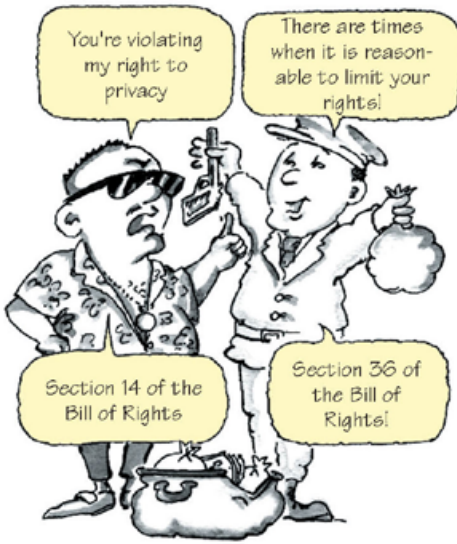


But, you must remember that these rights can sometimes be **limited**. This means they could be changed, restricted, or even taken away. But this can only be done:

- if the law which limits a right applies to everybody;
- if there is a good reason to limit the right; and
- if limiting the right makes sense in an open and democratic country.

EXAMPLE

You have the right not to be searched or not to have your property taken. But there is a law which sometimes allows the police to search you and take your property. So, if the police find a body lying on the ground with stab wounds, and see you running away with blood all over you and a knife in your hand, they can search you and take the knife away from you, because this law applies to everybody, there is a good reason for this law and all open and democratic countries allow the police to do this.



Some rights can also be **suspended** or taken away for a short time during a **state of emergency**. A state of emergency can only be called when the security of the country is threatened by war, invasion, or revolution, or when there has been a natural disaster (such as a flood). But there are some rights, like the right to life, the right to human dignity, and some of the rights that arrested, detained or accused people have, which cannot be suspended and can never be taken away, even during a state of emergency.



A. WHAT IS IN THE BILL OF RIGHTS?

These are the human rights which are protected by the Constitution:

EQUALITY

Everyone is equal and has the right to equal protection and benefit of the law. No one, including the State is allowed to treat you less than other people (discriminate against you) because of your race, gender, sex, pregnancy, marital status (whether you are married or single), ethnic or social origin,



sexual orientation, age, disability, religion, conscience, belief, culture, language or birth. But fair discrimination will be allowed.

EXAMPLE

If the government wants to employ bus drivers, it would be fair for it to refuse to employ people who are blind.

Affirmative Action is allowed.

HUMAN DIGNITY

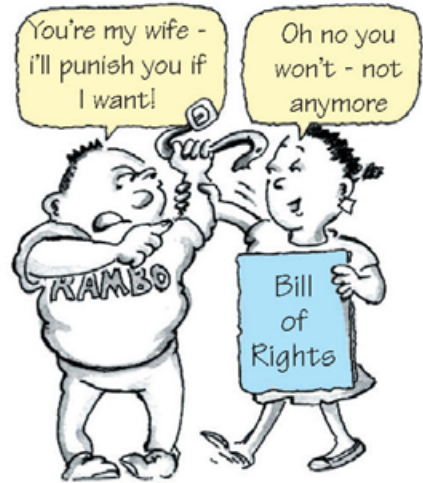
You have dignity because you are a human being, and your dignity must be respected and protected.

LIFE

You have the right to life.

FREEDOM AND SECURITY OF THE PERSON

- You can only be imprisoned if there is a good reason.
- You cannot be detained without trial.
- Torture is not allowed.
- You cannot be treated or punished in a cruel, inhuman or degrading way.
- You have the right to be free from all forms of violence, even in your own home. This is to stop people abusing their wives, husbands or children.
- You have control over your body.
- You have the right to make decisions about whether you want to have children.
- You cannot be forced to undergo medical or scientific experiments against your will.



SLAVERY, SERVITUDE AND FORCED LABOUR

Slavery and forced labour are not allowed.

PRIVACY

- You cannot be searched or have your home or possessions searched without a legal basis.
- No one has the right to take your things, open your mail or listen to your telephone calls.

FREEDOM OF RELIGION, BELIEF AND OPINION

- You can believe or think whatever you want.
- You can follow whatever religion you choose, or no religion at all.
- State institutions (like schools) can follow religious practices (like having prayers in the morning), but this must be done fairly and people cannot be forced to attend them.



FREEDOM OF EXPRESSION

You can say whatever you want, and the press too can say whatever they want. But spreading propaganda for war, or encouraging people to use violence is not allowed. **Hate speech** is also prohibited. Hate speech is spoken or written language (or sometimes actions) which hurts people or tries to get people to cause harm to other people because of their race, ethnicity, gender or religion.

ASSEMBLY, DEMONSTRATION, PICKET AND PETITION

You can:



Gather together



Hold a demonstration



Picket



Present a petition

But you must do all of these things peacefully -
NO WEAPONS

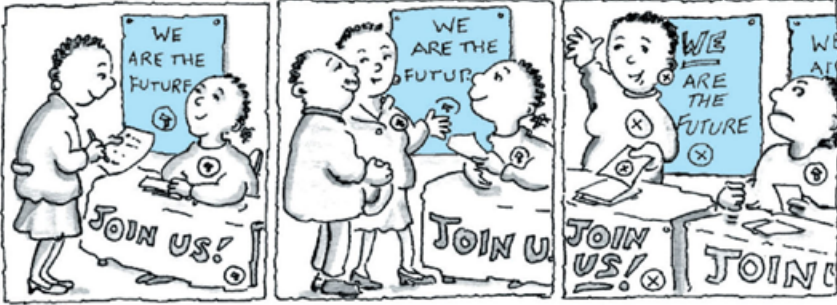


FREEDOM OF ASSOCIATION

You can associate with whomever you wish.

POLITICAL RIGHTS

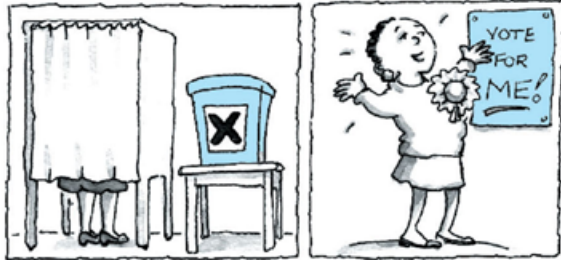
You can:



Join a political party

Encourage other people to join a political party OR Start your own political party

Elections must be free and fair. If you are a **citizen**, and at least **18 years old**, you can:



Vote in secret in elections

Stand for election yourself.

CITIZENSHIP

A citizen may not be deprived of citizenship.

FREEDOM OF MOVEMENT AND RESIDENCE

- You can go and live wherever you want in South Africa.
- You can leave South Africa if you choose and South African citizens can come back at any time.
- Every South African can get a passport.

FREEDOM OF TRADE, OCCUPATION AND PROFESSION

You can do whatever work you want.

LABOUR RELATIONS

- You have the right to fair labour practices.
- Workers can form and join trade unions and can strike.
- Employers can form and join employers' organisations.
- Trade unions, employers' organisations and employers can bargain collectively.
- Trade unions and employers' organisations can decide how they will be run. They can also organise themselves by getting new members. They can form and join federations made up of other trade unions or employers' organisations.



ENVIRONMENT

You have the right to a safe and healthy environment. The State must do things (such as passing laws) to protect the environment.

PROPERTY

Your property can only be taken away from you if:

- the law dealing with this applies to everyone;
- it is going to be used for a public purpose or in the public interest* (for example, if the government is going to build a dam and your property will be flooded); and

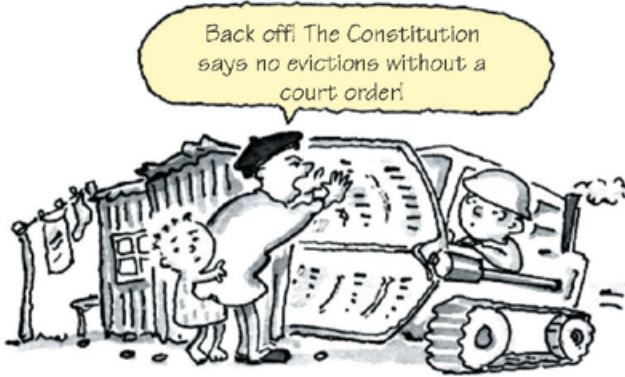


you are paid for your property. The amount of money the government will pay can either be agreed between you and the government, or it can be decided by a court if you cannot agree. This section says what a court must look at when deciding how much money the government must pay. **Land reform** is allowed.

If you or your community lost land after 1913 (when laws were passed making it impossible for black people to own land) you can either get the property back or be paid for the land you lost. If you have been living on land which you were not allowed to own because of laws which did not allow certain people to own land, it is now possible to own the land or be compensated in another way.

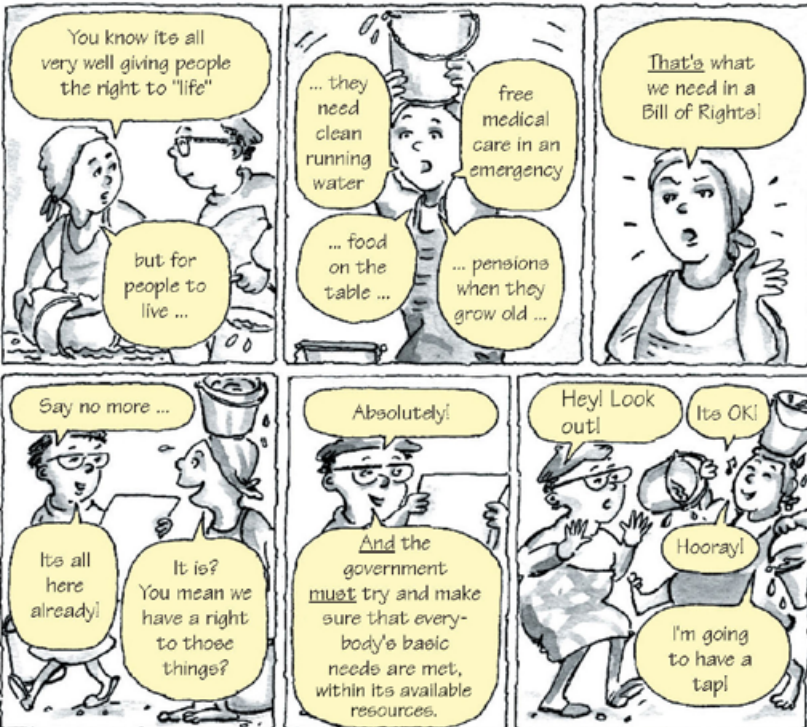
HOUSING

- You have a right to access housing. The government must try to provide people with proper housing.



- You cannot be evicted from your home and your home cannot be broken down unless a court has heard your case, and made a ruling.

HEALTH CARE, FOOD, WATER AND SOCIAL SECURITY



CHILDREN

The Constitution gives children under the age of 18 special rights. These include the right:

To family care - or other care if the child is removed from its family.



To food, shelter and health care.



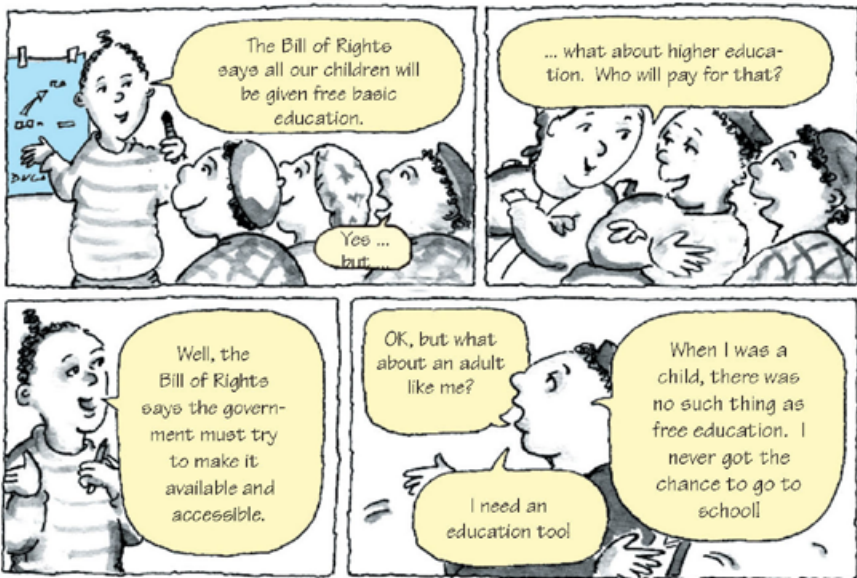
Not to be abused or neglected



Not to be forced to work or given work which is not suitable for a child.



EDUCATION





People can set up their own schools, universities or colleges at their own expense, and these must be registered with the state. These cannot discriminate against students because of their race. The Constitution does not say that government must pay for private schools, but government may decide to do this.

LANGUAGE AND CULTURE

You can use the language and follow the culture that you choose, but you must respect others' human rights when you do so.

CULTURAL, RELIGIOUS AND LINGUISTIC COMMUNITIES

People can:

- enjoy their own culture;
- practice their own religion;
- use their own language; and
- set up their own organisations.

But they must respect others' human rights when they do so.

ACCESS TO INFORMATION

- You have the right to information which the State has;
- You also have the right to information that someone else has if you need it to protect one of your rights.

JUST ADMINISTRATIVE ACTION

- Any action or decision taken by the government must be lawful, reasonable, and the procedures used must be fair.
- You can ask for written reasons for any decision or administrative action that is not in your favour.

ACCESS TO COURTS

You can have a legal problem decided by a court, or a similar structure.

ARRESTED, DETAINED AND ACCUSED PERSONS

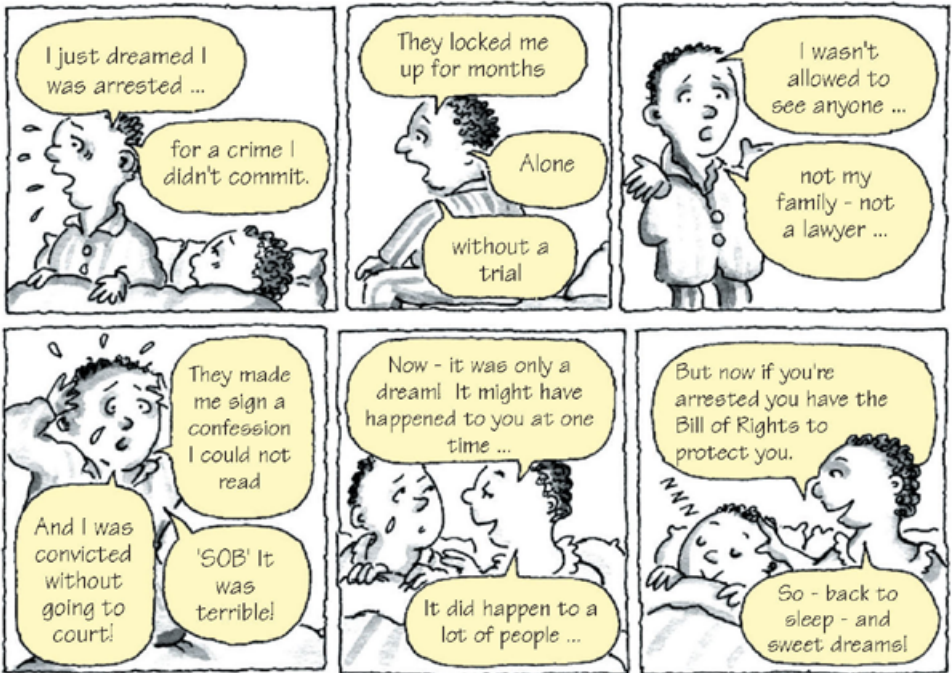
This section sets out the rights which people have who have been arrested and accused of committing a crime.

They include the right:

- to be informed why you are being detained;
- to remain silent;
- not to be forced to make a confession;
- to appear before court within 48 hours of your arrest;
- to be released, either on warning or on bail, unless there is a good reason to keep you in jail;
- to be given a lawyer, paid for by the state, if you cannot afford a lawyer and injustice might happen if you are not given a lawyer, and to be informed of this right;
- to be kept in adequate conditions and given food, something to read and medical treatment; and
- to speak to and be visited by your husband, wife or partner; your family; a religious counsellor of your choice; and your doctor.

EXAMPLE

The police think you have broken the law. They torture you until they get information from you. They will not be able to use this information in court, because the Bill of Rights says you cannot be tortured.

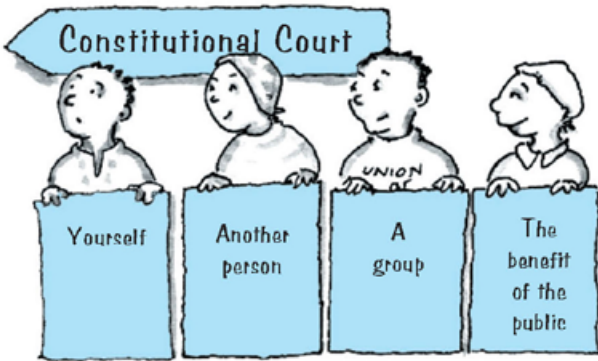


B. DO PEOPLE HAVE TO FOLLOW THE BILL OF RIGHTS?

The Bill of Rights is there to prevent abuse of people's rights. Sometimes the Bill of Rights deals with rights between the government and the people, and between people. For example, the section on **Equality** clearly says that people cannot discriminate against one another. If the Bill of Rights does not say this, it is usually left to the courts to decide which rights work between people.

C. WHO CAN TAKE A CASE INVOLVING THE BILL OF RIGHTS TO COURT?

You can take a case involving the bill of rights to court when you do so for:



An **association** or organisation can take a case to court to protect the rights of its members.

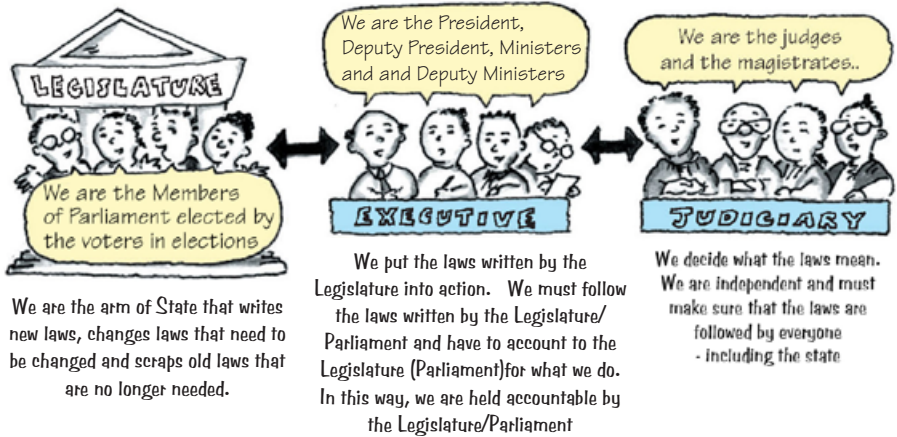
2. ELECTIONS

- Elections have to be held every five years.
- All South African citizens are allowed to vote in elections, (At least 18 years old).
- The party that wins an election becomes the governing party.

3. SEPARATION OF POWERS

The State is divided into three arms (called the **Legislature**, **Executive**, and **Judiciary**) to make sure that it works properly,

each arm of the State being able to check on the other to ensure that none abuses its power. Each of these arms has a unique task to do and is granted power to do these tasks.



Here's an example to show how the separation of powers works:



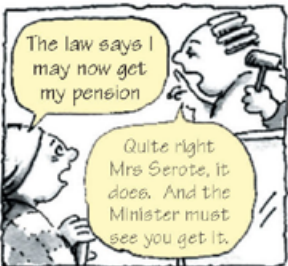
Parliament makes a new law which says that everyone over 60 years old can receive a pension.



The Minister of Social Development must now make sure that the Departments make these pensions available.



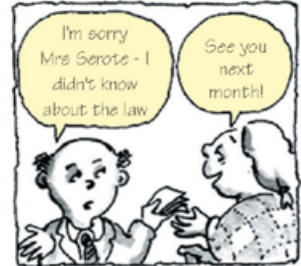
Mrs Serote, who is 60, applies for her pension and is refused.



Mrs Serote goes to court and asks them to force the Department to give her her pension.



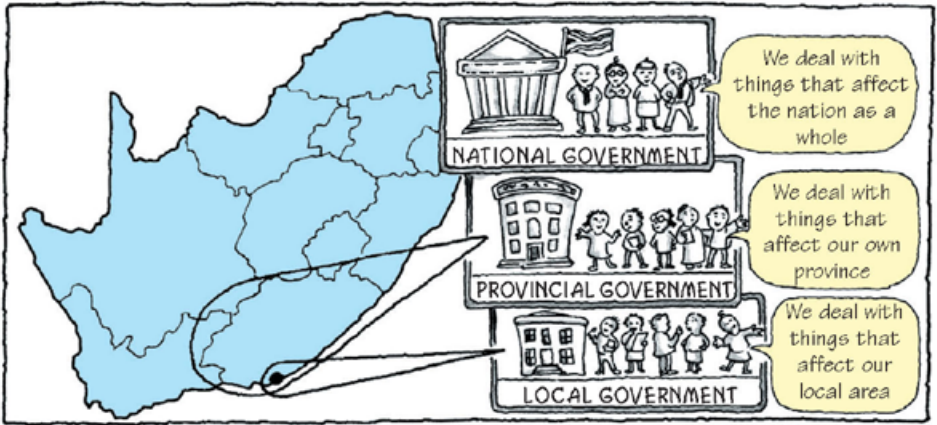
The Department must put the matter right.



Mrs Serote gets her pension.

4. THREE SPHERES OF GOVERNMENT

The governing of a country is a huge job. To make sure it works properly, it is divided into national, provincial and local **spheres**.

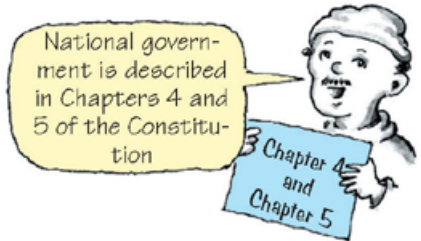


NATIONAL GOVERNMENT

National government deals with things which affect the whole country.

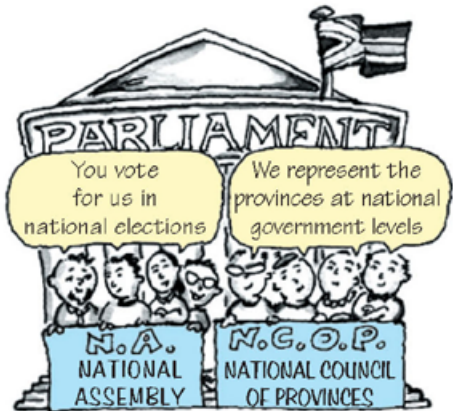
A. THE NATIONAL LEGISLATURE

The national legislature is also called **Parliament**. It is made up of the **National Assembly** and the **National Council of Provinces**. Parliament writes laws (**Acts of Parliament***) which have to be followed by the whole country.



i. THE NATIONAL ASSEMBLY (NA)

The NA has between 350 and 400 members. These members are chosen during national elections and stay in Parliament for 5 years. This is also called a 5 year term. They meet at Parliament in Cape Town. The rules about who can be a member of the NA are in Chapter 4 of the Constitution.



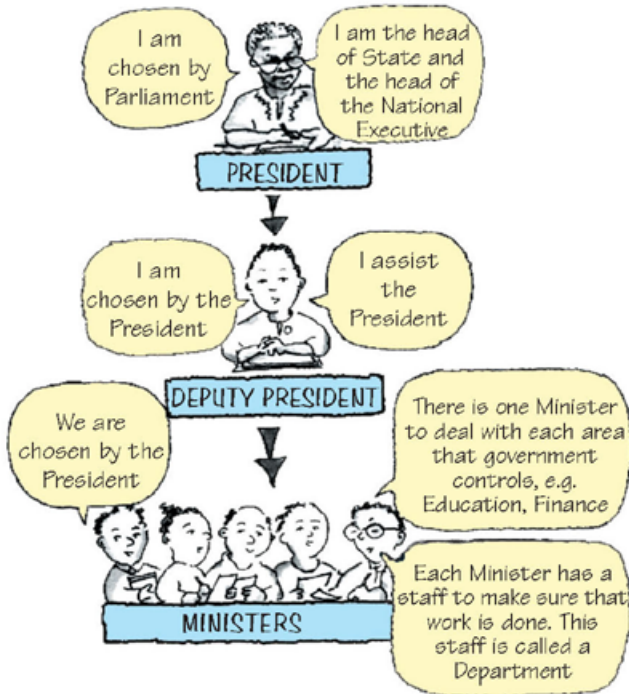
ii. NATIONAL COUNCIL OF PROVINCES (NCOP)

The NCOP is made up of 10 people or delegates from each province.

The NCOP represents the interests of the provinces at national level. It is also involved in passing Acts of Parliament.

B. THE NATIONAL EXECUTIVE

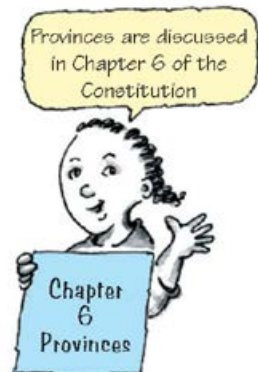
The National Executive is the body which puts laws passed by Parliament into operation. Members of the Executive must follow a Code of Conduct which is set out in an Act of Parliament. This Code of Conduct contains agreed rules about how members of the Executive must behave.



PROVINCIAL GOVERNMENT

Provincial governments deal with issues which affect their provinces only. These include the health services provided by the province, nature conservation in the province, and the major roads which run through the province.

There is a **Provincial Legislature** to pass laws for each province. These laws have to be followed by people while they are in that province.



Provincial Legislatures are also allowed to **pass provincial constitutions** for their provinces. But, like all laws written by the Provincial Legislature, provincial constitutions cannot go against the national Constitution. Each province has a **Provincial Executive** to put these laws into operation. These are made up of a **Premier** and an **Executive Council**.

LOCAL GOVERNMENT

The local sphere of government is made up of **municipalities**. Municipalities deal with issues which affect the local area of the **municipality** that they control. These include electricity, fire fighting, traffic and parking and many other things. Each municipality has a **Municipal Council**, which is both the Legislature and the Executive for that municipality. Laws passed by a Municipal Council are called **by-laws***. They have to be followed by everyone living in or visiting a local area while they are in that local area. By-laws cannot go against:

- the Constitution;
- Acts of Parliament; or
- provincial laws for that province.

One of the important things about local government in the Constitution is that it says local governments must see to the development of communities. This means local government must not just make sure that people follow the laws, but must also serve the needs of their communities.

Provincial Executive



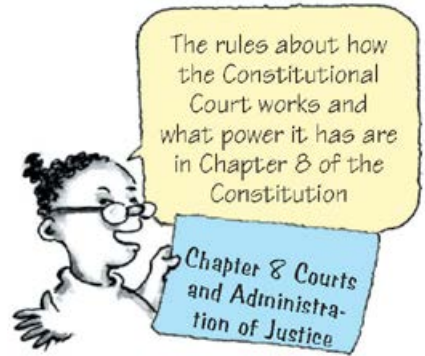
5. THE CONSTITUTIONAL COURT

There are a number of different courts in South Africa. They are:

- the Constitutional Court;
- the Supreme Court of Appeal (which used to be called the Appellate Division);
- the High Courts (which used to be called the Supreme Courts);

- Magistrates' Courts; and
- other courts set up by Acts of Parliament (such as the Small Claims Court).

The Constitutional Court is the highest court in constitutional matters. If any of your constitutional rights have been broken, you can go to this court. If the Constitutional Court agrees with you, it can set aside the law, or it can stop the government from doing what it is doing.



6. STATE INSTITUTIONS SUPPORTING CONSTITUTIONAL DEMOCRACY*

The institutions for strengthening Constitutional democracy are set out in Chapter 9 of the Constitution. These institutions are independent and subject only to the Constitution and the law. They are:

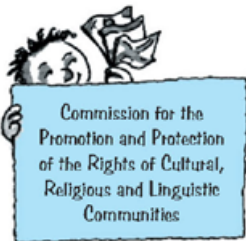


The Public Protector investigates complaints or conduct in any sphere of government. The Public Protector will try to solve the problem or will refer it to someone who can.

This commission protects Human Rights. It educates people about Human Rights. It investigates complaints about Human Rights abuses and helps you take these to court.



Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities. This Commission promotes respect between communities. It can recommend that Cultural Councils are set up for different communities.



The Gender Commission is there to stop laws, practices and customs that discriminate against people because of their gender. It can also monitor, educate and lobby for things like changing laws.





The Auditor-General checks whether the State has properly spent public money. The Auditor-General is not allowed to work for a political party.

This Commission manages all elections to make sure they are free and fair.



7. SECURITY SERVICES

The security services of South Africa are the **police, defence** and the **intelligence services**.

The Constitution ensures that security services protect South Africa and the people who live here by saying:

- no-one who works in the security service can follow an order to do anything which is against the law;
- the security services are not allowed to act for or against a political party;
- the defence force is the only military force allowed;
- there is a Minister; a multi-party Committee of Parliament; and a secretariat made up of civilians to make sure the police service and defence force do their work properly; and
- a civilian inspector monitors what the intelligence services do.

The Security Services are dealt with in Chapter 11 of the Constitution



PART FOUR

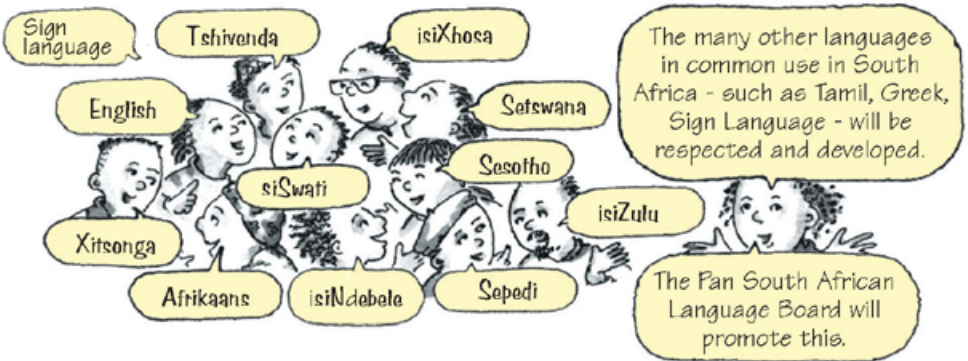
WHAT ELSE THE CONSTITUTION COVERS

1. PREAMBLE

This is the introduction to the Constitution. It says why the Constitution was written.

2. FOUNDING PROVISIONS

Chapter 1 deals with the basic principles of the Constitution and the national symbols, like the **National Flag** and the **11 official languages**.



3. CO-OPERATIVE GOVERNMENT

Government and government departments in each sphere (national, provincial and local) must co-operate with other government departments in the same sphere, and government in other spheres.

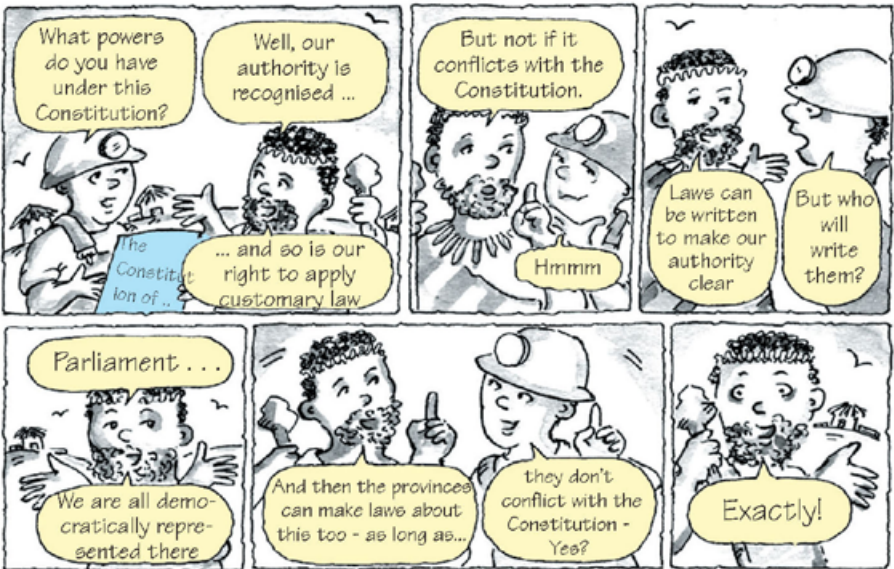
4. PUBLIC ADMINISTRATION

Chapter 10 sets out the principles which all people who work for government or institutions such as public enterprises must follow. These principles include things like being efficient, fair, accountable and so on.

This Chapter says that government will pass laws to make sure that these principles are followed.

It sets up a **Public Service Commission** to promote these principles in the public service. The public service is made up of all the people who work for government departments and is part of the public administration. The principles in this chapter must be followed by all people who work for the public administration.

5. TRADITIONAL LEADERS



6. FINANCE

The rules about how money raised by the government must be dealt with are in Chapter 13 of the Constitution. The Chapter does two main things. It ensures that there are proper controls over the way government spends our money. It also tells us how money must be divided among the national government, provinces and local government. It sets up a **National Revenue Fund; Provincial Revenue Fund; National Treasury; Financial and Fiscal Commission** to advise any level of government about their money; and the **South African Reserve Bank** to protect the value of South African money.

DICTIONARY

Acts of Parliament	Laws written by Parliament
By-Laws	Laws written by Municipal Councils
Constitutional Democracy	A democracy where everyone, including the government, must follow the rules in the Constitution
Institutions	Bodies or structures, like the Human Rights Commission
Parliament	The part of the State which writes new laws and changes old written laws, elects the President, and checks that the executive implements the laws
Public Interest	In the interests of the public, or good for the public
Speaker	The chairperson of the National Assembly or a provincial legislature
State	The South African Government

ABBREVIATIONS

NA	National Assembly
NCOP	National Council of Provinces



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

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