

Why the Constitution is so important

Parliament passed the Constitution in 1996. The Constitution contains the most important rules of our political system. It protects the rights of the people inside the country, and it explains their obligations. It defines the institutions of South Africa, what their powers are, and how they may use their powers. All South Africans must know about the Constitution and what it means for them.

Free copies are available from the Department of Constitutional Development, Directorate: Constitutional Education, Private Bag X804, Pretoria, 0001. Tel: (012) 334 0600, Fax: (012) 334 0604.

The Constitution sets out South Africa's values, the rights of the people, how Parliament and the other legislatures work, how the national and provincial executives are chosen, and how the courts work. It also establishes six institutions to support our democracy.

The Constitution is the supreme law

South Africa is a constitutional democracy. This means the Constitution is the highest law of the land. Parliament cannot pass a law which goes against the Constitution. No person, not even the President, can go against it. The courts and the government must also make sure what they do is constitutional. The Constitution itself is protected because it is much more difficult to change than any other law. The most important parts of the Constitution can only be changed if 75% of the members of the National Assembly and six of the nine provinces in the National Council of Provinces agree.

The values of the Constitution

The Constitution names the values which must guide South Africa and its people. These include:

- human dignity, the achievement of equality, and the promotion of human rights and freedoms
- non-racialism and non-sexism - this means that there may be no discrimination on the grounds of race or sex
- the rule of law and the Constitution as the supreme law - this means everything must be done according to the law, and the Constitution is the highest law
- a vote for every adult citizen, one national voters' roll for all citizens, regular elections and a multi-party system of democratic government

These values guarantee our democracy and are common to many democracies all over the world.

The Bill of Rights

Chapter 2 of the Constitution is the Bill of Rights. The Bill protects the rights of all people in South Africa, not only citizens. The state must respect, promote and fulfil the rights in the Bill. These rights can be limited in certain circumstances. For example, freedom is a right we all have, but the state has the right to send people to prison if they have been convicted of a crime by a court.

The Bill of Rights says many things, including:

- everyone is equal before the law and has the right to equal protection of the law
- affirmative action measures may be taken to achieve greater equality in the society
- no unfair discrimination is allowed against anyone for reasons which include race, sex, language, ethnic or social origin, religion, sexual orientation or pregnancy
- everyone has the right to freedom of movement and may not be deprived of it unless there is a good reason
- everyone has the right to freedom of religion, belief, opinion and expression
- every adult citizen has the right to form a political party and to participate in its activities and to vote in regular elections
- everyone has the right of access to information and to administrative action that is just
- everyone has the right to an environment that is not harmful to their health or well-being

The Bill of Rights also guarantees socio-economic rights which include the right to housing, health care, food, water, social security and education. This is a special category of rights because not everybody will be able to enjoy them immediately. Instead, the state has a responsibility to secure these rights for people within what it can afford over a period of time. The Human Rights Commission monitors the state's progress on socio-economic rights.

The separation of powers

Briefly, the Constitution provides for the state to be separated into the legislature (the part which makes laws), the executive (the part which governs the country from day to day), and the judiciary (the courts).

The courts

The courts are independent and subject only to the Constitution and the law. They must apply the law impartially (without bias). One example of the way a court applies the law is by deciding whether a person accused of a crime is guilty. If the person is found guilty, the court will decide on a punishment. The courts also decide on other things. For example, the Constitutional Court decides on all constitutional matters.

The spheres of government

The Constitution says there are three spheres of government - national, provincial and local. Each sphere has legislative (law-making) power over certain things and executive power and responsibility for certain things. Section 1 explains how the citizens elect the legislatures. The spheres of government are different to the old system in which most decisions were made at national level and merely implemented at provincial and local government level. The spheres of government are distinctive (each one is clearly separate from the others), interdependent (they depend on each other), and interrelated (their functions are related to one another). The three spheres have a constitutional duty to co-operate with one another.

Sphere	Legislature	Legislative power	Executive	Powers and responsibilities
Local	Municipality	Makes by-laws (local laws) about certain things, subject to provincial and national laws	Town clerk and municipality members	Responsible for local matters like local development and services
Provincial (nine provinces)	Provincial Legislature	Make laws about provincial things like housing, subject to national laws. For some things, provinces may make laws even if Parliament disagrees.	Premier and MECs (members of the executive council of each province)	Makes provincial policy, subject to national policy. Drafts and implements provincial laws. Responsible for provincial matters like health, policing and housing. On some issues, provinces may make their own policy even if national government disagrees.
National	Parliament	Make laws for the whole country, although provinces have more power over certain things.	President, Cabinet Ministers, Deputy Ministers	Makes national policy, draft and implement national laws. Responsible for national matters like intelligence, defence and foreign affairs.

Independent institutions to guarantee democracy

Six independent state institutions protect and deepen our democracy:

1. The Public Protector - to investigate the conduct of state officials on behalf of the public, but not court decisions
2. The Human Rights Commission - to promote the protection, development and attainment of human rights
3. The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities. When this commission is established, it will promote respect for the rights of cultural, religious and linguistic communities.
4. The Commission for Gender Equality - to promote the protection, development and achievement of gender equality.
5. The Auditor-General - to audit how taxpayers' money has been spent by the state and its organs.

6. The Independent Electoral Commission - to manage national, provincial and municipal elections and ensure that these elections are free and fair.

The Constitution has 14 chapters

1. The **founding provisions** cover the values of the Constitution; the Constitution as the highest law, citizens are equal, the anthem, the flag and 11 official languages. These values include:

- human dignity, the achievement of equality, and the promotion of human rights and freedoms
- non-racialism and non-sexism
- the rule of law and the Constitution as the highest law
- a vote for every adult citizen, one national voters' roll for all citizens, regular elections and a multi-party system of democratic government

2. The **Bill of Rights** protects the rights of all people in the country, not just citizens. Some of these rights are:

- everyone is equal before the law
- affirmative action may be taken to achieve greater equality
- no unfair discrimination is allowed
- everyone has the right to freedom
- everyone has freedom of religion, belief, opinion and expression
- everyone has political rights.

The Bill of Rights also guarantees the right to housing, health care, food, water, social security and education. However, these rights will not be available to everybody immediately.

3. **Co-operative government:** there are three spheres of government - local, provincial and national - and they must co-operate with each other. Each sphere has the right to make certain laws, and each has certain responsibilities.
4. **Parliament** consists of the National Assembly and the National Council of Provinces. It makes laws for the country and monitors government.
5. The **President and the National Executive** rule the country.
6. There are nine **provinces**. Each one has a provincial legislature and a provincial executive.
7. **Local government:** municipalities must provide services at local level.
8. **Courts and the administration of justice.** The courts are independent and subject only to the Constitution and the law. They must apply the law impartially (without bias). The Constitutional Court decides on all constitutional matters. Prosecutions are brought to court by the relevant public prosecution authority.
9. There are six independent **state institutions supporting constitutional democracy:**
 - The Public Protector. Tel (012) 322 2915/6

- The Human Rights Commission. Tel (011) 484 8300
- The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (not yet established). Tel (012) 334 0891/0889
- The Commission for Gender Equality. Tel (011) 403 7182
- The Auditor-General. Tel (012) 426 8000
- The Independent Electoral Commission. Tel (012) 428 5700

10. The **public administration** must be accountable and professional
11. The **security services** - the national defence force, the intelligence services and the police - must protect the citizens.
12. The role of **traditional leaders** and customary law is recognised subject to the Constitution.
13. The rules for government **finance** are in the Constitution.
14. The Constitution includes **general provisions** as well.