

Accountability Now

KNOW YOUR RIGHTS CLAIM YOUR RIGHTS



The purpose of this handbook - **Know your Rights, Claim your Rights** – is to provide a straightforward overview of the Constitution of South Africa; to set out the basic constitutional rights and responsibilities of all South African citizens and to assist in drawing the attention of civil society to the remedies available when their rights have not been respected and upheld.

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1. Introduction

The Constitution of the Republic of South Africa of 1996 is this country's first fully democratic Constitution.

Prior to the Constitution (and its predecessor the Interim Constitution) becoming the highest law in the land, South Africa had a parliamentary sovereignty system. This means that Parliament was supreme and could make and pass any legislation it chose, provided the correct parliamentary procedure was followed. The courts had no power to ask questions as to whether such legislation was just and fair, or whether the laws were in the interests of the South African nation. Law making was not constrained by constitutional values and principles.

The Interim Constitution of the Republic of South Africa was adopted in 1993 and came into effect on the day of the first democratic elections on 27 April 1994.

Although our present final Constitution was adopted by the Constitutional Assembly on 8 May 1996, when the constitutional text was presented to the Constitutional Court for certification it was found to be wanting in certain respects. Following some revision and reworking by the Constitutional Assembly, the Constitution as we know it today was certified by the highest court in our land on 4 December 1996.

After President Nelson Mandela signed the new and final Constitution into law, it formally came into effect on **4 February 1997**.

The biggest difference between the 'old order' and the 'new' (i.e. the adoption of constitutionalism) is that anything that is inconsistent with our Constitution, both law and conduct, is invalid. The Constitution is the **supreme law** of our country, against which everything, both the law and conduct,

is tested. Government policies and practices have to be constitutionally compliant.

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This basic and far-reaching change in our law is intended to have wide-ranging, positive effects for the ordinary people of South Africa. A non-racial, non-sexist, multi-party democracy in which every law and all conduct have to be consistent with the Constitution is a very different set-up to that which was in place under the pre-1994 apartheid regime.

The values of **human dignity, equality** and the **various freedoms** set out in the Constitution are guaranteed to all in terms of the Bill of Rights, which forms Chapter 2 of the Constitution.

The state is required to **respect, protect, promote and fulfil the rights** in the Bill of Rights, which applies to all law and binds the legislature, the executive and the judiciary, as well as all organs of state.

It is the Constitution which sets us on the 'high road' into the future. This high road future is only possible however if the values of the Constitution become the living reality of ordinary people throughout the cities, towns, rural areas and townships of our land.

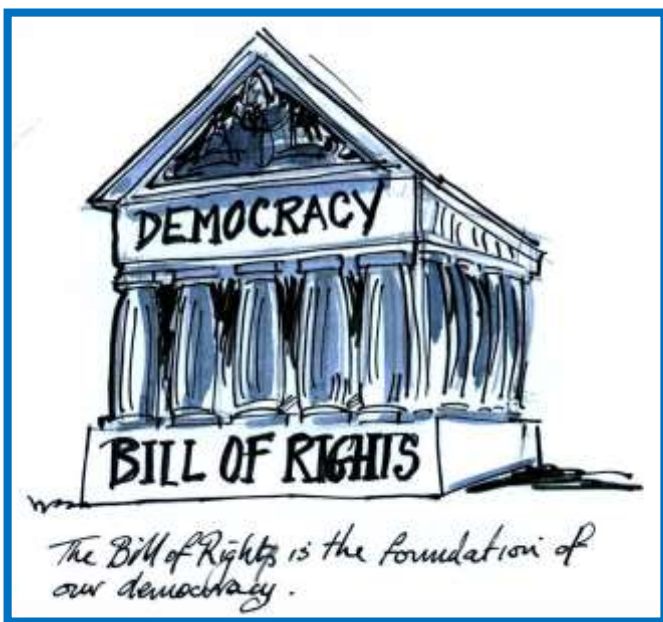
This supreme law has been built on the blood, sweat and tears of the martyrs of the struggle for the

liberation of all of the people of South Africa and from the monstrous inequalities and inequity of the past. It is our blueprint for a better future and it is up to everyone in South Africa to get to know and to live by the values of the Constitution.

If nobody knows or takes the trouble to find out what the Constitution promises, the Constitution will 'wither away' like an unused limb.

The purpose of this handbook is to make clear the **constitutional rights and responsibilities of all**

South Africa citizens, as well as to note the remedies available to them when their rights are not upheld. The handbook is written with the intention of helping those who are ordinary citizens to get to know what their Constitution can do for them and what they need to do in return as responsible citizens in order to keep our new found constitutional democracy alive and able to flourish.



It is only when everyone knows and claims their rights on the one hand, and acts responsibly towards others on the other hand, that the goals and aims of the Constitution can – and will – be achieved.

All who live and work in South Africa, united in their diversity, should have a copy of the Constitution as their shield when they come into conflict situations and as their sword when their rights are infringed or disrespected by the state or by others.

2 Why have a Constitution?

A Constitution is a **set of rules and values** for those who govern and those who are governed.

In most countries Constitutions are written and exist in the form of a single document. The current Constitution in South Africa is a transformative document reflecting the values of human dignity, equality and freedom which are the basis of our non-racial non-sexist post-apartheid order.

Generally, a Constitution describes how the government is organised and what it does. In Constitutional democracies there are restrictions on the conduct of the government and defined limits as to how the government needs to function. Constitutions clarify the relationship between the state and its institutions as well as the relationships between the tasks of the executive, legislature and judiciary.

Usually, Constitutions do not only deal with the relationship of the state and its institutions but also set out the rights of the individual citizens and their relationship with the state. In South Africa the Bill of Rights is part of the Constitution.

Given that the Constitution is the highest form of law in South Africa; all other forms of law made by the institutions of the state have to be in line with it. If any laws fail to meet the provisions of the Constitution, they will be struck

down as invalid. The Constitutional Court, the court of highest appeal for Constitutional matters, has the power to declare all laws and conduct which do not meet with, or uphold, the criteria set out in the Constitution, unconstitutional.

All Constitutions exist to help ensure that there is a **balance between powers of the state and the rights of the individual person**.



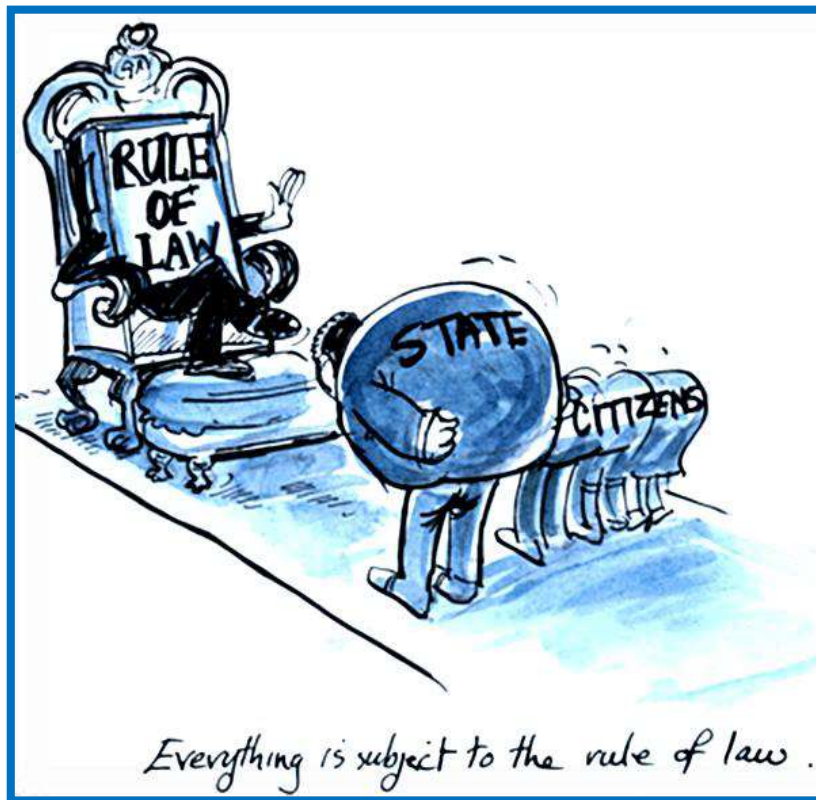
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Our Constitution sets the tone for the country to be organised in an orderly and responsible manner. People agree to live their lives according to the rules of their country's Constitution in exchange for the protection the state provides them against various eventualities, for example: war; invasion; crime; disease and the violation of human rights.

3 A brief overview of the drafting and development of the South African Constitution

After the end of apartheid, which was announced in 1990, there was the need for a new system acceptable to all people living in our country. This new system or order needed to be designed in such a way as to be rid of the unfair discrimination of the past and provide equal rights for everyone.

The time of the negotiations for a new Constitution was tough, but after a great deal of negotiation



in the early 1990s an interim Constitution was adopted by Parliament in 1993.

The Interim Constitution contained 34 principles which had to become part of the final Constitution of 1996. These principles were the result of the negotiations for the Interim Constitution which were held from 1991 to 1993.

In the making of the Constitution for a democratic South Africa, the

general public was engaged and over two million people directly participated. This occurred in the form of workshops and public meetings held by the Constitutional Assembly. It was regarded as important to obtain input in the form of submissions from those people affected by the new Constitution and to hear their opinions about conflicting issues during meetings. For the Constitutional Assembly this input from the people was very important and was kept in mind when it came to the writing of the actual Constitution.

The Constitutional Assembly was responsible for drafting the new Constitution following the feedback gathered from the public, the consideration of mandatory principles from the interim Constitution and the input from experts. This draft was then given to the Constitutional Court, our

highest court, which had to check whether the new Constitution complied with the earlier interim Constitution. The first draft was passed on to the Constitutional Court in May 1996.

This version was however, not approved as it did not comply with all of the 34 principles from the Interim Constitution. The Constitutional Assembly had to make some changes as a result of the criticisms of the court and the revised version was given to the court in October 1996. The court approved it and the new Constitution came into force on February 4 1997.

In its consent to the Constitution, the court made clear that it found the following provisions to be of very high importance:

- The value of human dignity.
- Promoting the achievement of equality before the law for all citizens.
- The recognition of human rights and freedoms.
- The recognition of the Constitution as the highest form of law.
- Establishment of the rule of law as a founding principle of the new order.

Today's Constitution of South Africa contains fourteen chapters and seven schedules, in which each chapter and schedule always deal with one specific topic.

Since its adoption in 1997, the Constitution has been amended several times. Some of these amendments have been technical changes, but also reactions to new developments in the country. The Constitution, as the highest form of law in the state, needs to be regularly revised to meet the changes of today's world. In this way the Constitution remains **a living document** which is relevant to the needs of the people governed by its rules, principles and values.

Special majorities are needed to make changes to the Constitution in order to ensure that the rights of minorities are protected and that our new order endures.

4 An overview of the Chapters and Schedules of the South African Constitution

The preamble to the Constitution of South Africa reads as **the voice of the people** and in so doing, provides every member of society with both the responsibility of upholding our rights, as well as the right to claim them.

The entire preamble reads as follows:

*We, the people of South Africa,
Recognise the injustices of our past;
Honour those who have worked to build and develop our country; and
Believe that South Africa belongs to all who live in it, united in our diversity.
We therefore, through our freely elected representatives, adopt this Constitution as the
supreme law of the Republic so as to –*

*Heal the divisions of the past and establish a society based on democratic values, social
justice and fundamental human rights;*

*Lay the foundations for a democratic and open society in which government is based on
the will of the people and every citizen is equally protected by law;*

Improve the quality of life of all citizens and free the potential of each person;

*Build a united and democratic South Africa able to take its rightful place as a sovereign
state in the family of nations.*

May God protect our people.

Nkosi Sikelel' iAfrika. Morena boloka setjhaba sa heso.

God seën Afrika. God bless South Africa.

Mudzimu fhatutshedza Afurika. Hosi katekisa Afrika.'

Chapter 1 of the Constitution states the *Founding Provisions* of the Republic of South Africa.

The Republic is based on several values such as human dignity, equality, non-racism and the importance of human rights. The first chapter also lays down the supremacy of the Constitution and the rule of law. It states that all citizens are equally entitled to the rights, privileges and benefits of citizenship, but are also equally subject to the duties and responsibilities of such citizenship. Accountability, openness and responsiveness are all regarded as foundational to the new order.

The colours of the national flag, the eleven official languages (which enjoy parity of esteem) and the national anthem are also determined by this chapter.

Chapter 2 of the Constitution contains the *Bill of Rights* and can be regarded as a cornerstone of our South African democracy. As an entire section of this handbook is dedicated to the Bill of Rights, no further detail will be provided here.

Chapter 3 of the Constitution deals with the *Co-operative Government* in South Africa. This is constituted as the national, provincial and local spheres of government, which are distinctive, interdependent and interrelated.

Chapter 4 of the Constitution focuses on the role of *Parliament* and sets out the powers of Parliament, made up of the National Assembly and the National Council of Provinces. Parliament leads the legislative process, according to the provisions of the Constitution.

Chapter 5 of the Constitution deals with the second branch of government, *The President and the National Executive*. The powers and the functions of the President are set out in section 84 of our Constitution, which is contained in this chapter. The executive power of the Republic is vested in the President and it is he or she who exercises this power, together with the other members of Cabinet. The Cabinet consists of the President, the Deputy President and the Ministers, the latter being appointed and dismissed by the President according to his or her discretion.

Chapter 6 of the Constitution deals with the *Provinces of South Africa*. The nine provinces each have their own legislature and executive, with the provincial legislature having the power to pass provincial laws – i.e. laws applicable to a specific province only.

The executive council consists of the Premier of the province and ten other members, appointed by

the Premier. The provincial governments have the power to make decisions for the province they are governing. Whilst each province can have its own constitutions and laws, neither may, in any way, contradict the national Constitution and laws passed on the national level.

Chapter 7 of the Constitution defines *Local Government*. Local governments have the authority to pass laws, so-called by-laws, which cover their own municipality.

Again, these by-laws have to respect the basic principles of the country and may not violate the national Constitution, Parliamentary acts and provincial legislation.

Chapter 8 of the Constitution deals with the *Courts and the Administration of Justice*. As with the Bill of Rights, an entire section of this handbook is devoted to the provision of an overview of the South African justice system. The National Prosecuting Authority, which falls under this section, is required to act in the same independent manner as the courts – that is to say, without fear, favour or prejudice.

Chapter 9 of the Constitution deals with the *State Institutions Supporting Constitutional Democracy*, also covered in detail in a separate section of this handbook.

Chapter 10 of the Constitution deals with *Public Administration*. It refers to the people who work in and are paid by the public service – i.e. government servants whose duty it is to ensure that the lawful policies made by government are put into practice. Examples of those who work in this sector include those working in the army; government departments; public schools and hospitals and the South African Police Service.

Section 196 of the Constitution, contained in Chapter 10, provides for the establishment of the Public Administration Commission which is an independent body whose duty it is to monitor and evaluate the administration of public services.

Chapter 11 of the Constitution deals with the *Security Services* of the country. The Constitution establishes three such bodies: the defence force; police service and the intelligence service. National security must reflect the resolve of citizens, as individuals and as a nation, to live as equals, in peace and harmony – free from fear and want and to seek a better life.

Chapter 12 of the Constitution provides recognition for the institution, status and role of Traditional

Leaders, according to customary law, subject to the Constitution. It is important to note that the Constitution still has supremacy over customary law, which means that whenever customary law is applied before court, no decision taken by such court may violate the provisions set out in the Constitution.

Chapter 13 Of the Constitution deals with the general financial matters of the Republic. This section of the Constitution allows for the establishment of a Financial and Fiscal Commission which acts independently, makes recommendations, monitors and guides government expenditure. The commission offers guidance and advice to all levels of government on their expenditure.

Chapter 14 of the Constitution sets out various General Provisions, including, for example, international agreements and the application of international law. This chapter also deals with issues such as the charter of rights; the funding of political parties and provides definitions on different types of legislation and organs of state.

The Constitution provides for seven schedules which set out some very basic matters to do with how South Africa operates and functions on a practical level. A brief outline of each schedule is provided in the table below.

Schedule 1 Focuses on the national flag and in the second part of the first schedule the exact geographical areas of the nine provinces are defined.

Schedule 2 States the Oaths and Solemn Affirmations that all three branches of government have to pledge when entering their office.

Schedule 3 Exclusively deals with Election Procedures.

Schedule 4 Clearly defines those areas in which the national and the provincial legislature have concurrent competencies. There are two parts to this schedule, A and B.

Schedule 5 Deals with Functional Areas of Exclusive Provincial Legislative Competence. Again there are two parts to this schedule, A and B.

Schedule 6 Focuses on Transitional Arrangements. It provides definitions and explains how to deal with the laws that were made before the new Constitution was enacted and states that old provisions, if they do not have a wider application than the new ones, will

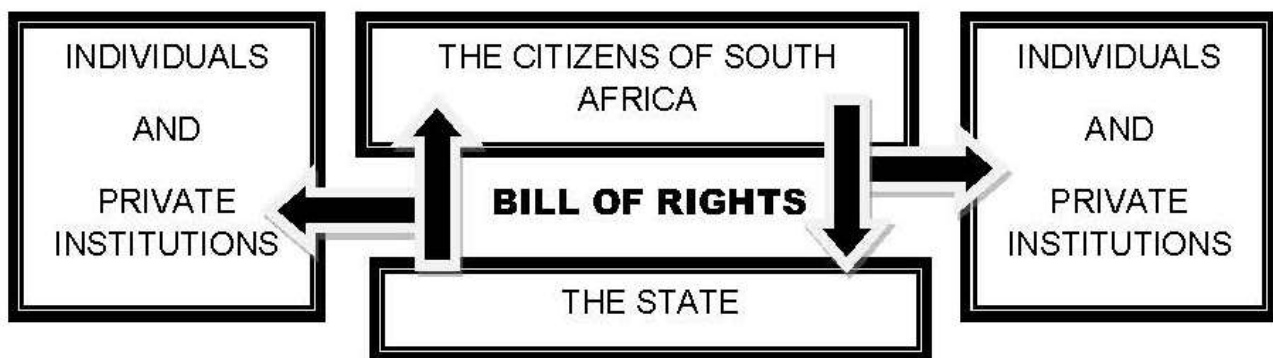
continue to be valid.

Schedule 7 The last schedule of the Constitution, provides an overview of the laws that have been repealed throughout time.

5 The Bill of Rights

The Bill of Rights is the most important part of our Constitution as far as ordinary people are concerned and is stated under section 7 (1) of the Constitution to be ‘**a cornerstone of democracy in South Africa**’.

This Bill requires the state to respect, protect, promote and fulfil the rights guaranteed in the Bill of Rights.



The rights set out in the Bill of Rights apply to the state and protect individuals against the state (vertical application) and also apply between individuals themselves and between individuals and private institutions (horizontal application).

In other words, the Bill of Rights applies to everyone, in all directions. It promises that all the citizens of South Africa will enjoy the protection of the democratic values of human dignity, equality before the law and the various freedoms set out in the Bill of Rights. With this promise however, along with the horizontal application of the Bill of Rights,

also comes the responsibility of ensuring that these same values form an integral part of how citizens treat one another.



In essence the Bill of Rights is the 'rule book' with regard to both **rights and responsibilities**, which go hand-in-hand and cannot be divorced from one another.

Any individual, either a natural or a juristic person, or a group of people can approach a competent and appropriate court if it is believed that a given right in the Bill of Rights has been infringed or is being threatened, either by the state, its organs or another person or persons.

In addition to the courts being available to South African society, the Constitution also provides for direct and free access to various Chapter 9 institutions and other organisations that may be approached when it is felt that a right, or a number of rights, in the Bill of Rights have been infringed or threatened. The nature, jurisdiction and access to such institutions are the subject of a later section of this handbook.

A summary of the various rights enshrined in this chapter of the Constitution is contained in the table below.

Some of the most important rights and needs for promoting accountability and transparency in South African society some 23 years (2017) into our new democracy include:


Section 9:	Equality
Section 10:	Human dignity
Section 12:	Freedom and security of the person
Section 16:	Freedom of expression
Section 17:	Freedom of assembly, demonstration, picket and petition
Section 26:	Housing
Section 27:	Health care, food, water and social security
Section 29:	Education
Section 32:	Access to information

<u>Section of the Constitution under which the right falls</u>	<u>The right provided for ...</u>
Section 9	Equality (see below)
Section 10	Human dignity (see below)
Section 11	Life: The right to life, and with it, the abolition of the death penalty is a controversial right. While many people in South Africa may have preferred to see the practice of hanging serious offenders continued, the Constitutional Court ruled that this is a cruel and unusual punishment for crime. According to academic research the death penalty does little to deter serious criminals, but rather brutalises society instead.
Section 12	Freedom and security of the person (see below)
Section 13	Slavery, servitude and forced labour: Slavery, servitude and/or forced labour do not fit in with the notion of respect for human rights and therefore society is protected from ever having to engage in such activities.
Section 14	Privacy: The right to privacy includes the right not to be searched, to have possessions seized and/or the privacy of communication infringed.
Section 15	Freedom of religion, belief and opinion: Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
Section 16	Freedom of expression (see below)



Section 17	Assembly, demonstration, picket and petition (see below)
Section 18	Freedom of association: As South Africans we are free to associate with whomever we please and choose.
Section 19	Political rights: Citizens have the right to form political parties; the participation in elections is guaranteed and every adult citizen has the right to vote.
Section 20	Citizenship: Nobody can be deprived of their citizenship.
Section 21	Freedom of movement and residence: Everyone has the right of freedom of movement and residence.
Section 22	Freedom of trade, occupation and profession: All citizens have the right to choose their trade, occupation or profession freely within the law regulating the workplace.
Section 23	Labour relations: Unfair labour practices are forbidden and the labour

	laws of South Africa set out various rights and responsibilities of both employers and employees in ensuring that fairness and equality are present in the workplace
Section 24	<p>Environment: The right to an environment that is not harmful to the health and well-being of everyone is an important one in these times of global climate change and over-population of the planet.</p> <p>The Bill of Rights seeks to balance conservation with securing ecologically sustainable development and the use of natural resources, whilst also promoting economic and social development.</p>
Section 25	<p>Property: No one may be deprived of property except in terms of a law of general application and no law may permit arbitrary deprivation of property.</p> <p>This means that expropriation without compensation is not allowed, as has occurred in other countries in Africa, such as Zimbabwe.</p>
Section 26	Housing (see below)
Section 27	Health care, food, water and social security (see below)

Section 28	<p>Children: The rights of children are especially acknowledged in the Bill of Rights and every child has the right to family or parental care, basic nutrition, shelter, basic health care services and social services. The best interests of the child are of paramount importance in all matters concerning the child.</p> 
Section 29	Education (see below)
Section 30	<p>Language and culture: People are free to use the language of choice and participate in a cultural life of their choice, provided that such choice is not inconsistent with the provisions of the Constitution.</p>
Section 31	<p>Cultural, religious and linguistic communities: Nobody can be denied the right to enjoy their culture practice their religion and/or use their language.</p>
Section 32	<p>Access to information: Everyone has the right to access information whether held by the state or another individual, provided such information is required for the exercising or protection of a (any) right.</p>
Section 33	<p>Just administrative action: All administrative action must be lawful, reasonable and procedurally fair and if an individual feels his/her rights have been adversely affected by administrative action of some kind they</p>

	have the right to be given written reasons for such.
Section 34	Access to courts: Everyone has the right to have disputes resolved by the application of law decided in a fair public hearing in a court or another independent and impartial forum.
Section 35	<p>Arrested, detained and accused persons: Section 35 of the Bill of Rights sets out the rights of those who have been arrested, detained and/or accused and the person in this situation has the right to have all information provided to him/her in a language that he/she understands.</p> <p>Any evidence obtained via a violation of rights will be excluded from a court hearing if it were likely to render the trial unfair or be damaging to the administration of justice.</p>

Section 9: Equality

Equality before the law and the right to the equal protection and benefit of the law is the first right set out in the Bill of Rights. This right sets the tone for all the other rights in this section of the Constitution.

The right reads as follows:

- 9 (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
- (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or

social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth.

- (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
- (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

When the Bill was written it was taken into account that due to past racial policies, some members of the South African population were not on an equal footing to others and thus provision was made for the creation of policies to promote equality and correct the imbalances of the years gone by.

One such policy was that of Affirmative Action, which aimed to remedy and redress the imbalances of the past, with the intention to concentrate on educational upliftment and skills training in order to help those who were previously disadvantaged in these areas in a sustainable manner.

It is important to note that the Constitution regards 'disadvantage' as the operative criterion for taking Affirmative Action measures for both groups and individuals.

The practical roots of this remedy lay in the realm of the re-evaluation of standards;

attitudes and practices with regard to recruitment; training; the screening of job applicants and candidates; internal labour structures; organisational promotional practices and the culture of the workplace.



Equality

Here the Constitutional Court was asked to determine the constitutionality of certain sections in the Aliens Control Act 96 of 1991 which required that any foreigner who wanted to move permanently to South Africa had to obtain an immigration permit.

Section 25(5) of the Act authorised the Department of Home Affairs to issue such an immigration permit to the 'spouse' of a South African citizen or permanent resident.

It was argued before the Court that by granting a benefit to spouses or married people which was not granted to unmarried people or those who were not able to marry, such as same-sex life partners, the Act differentiated between groups of people. It was argued therefore, that this differentiation infringed two grounds listed in section 9(3), namely, sexual orientation and marital status.

The Court rejected a number of arguments made by government, including that such a differentiation protected the institution of marriage. The Court found instead that such an interpretation had the effect of furthering a number of harmful stereotypes and that the Constitution's conception of equality has moved beyond this.

The Court held that the effect of the legislation on same sex couples 'constitutes a crass, blunt, cruel and serious invasion of their dignity.'

The Court found that the legislation did indeed constitute discrimination, was unfair and that there was no reason to exclude unconventional relationships, like same sex relationships, from the protection given by the Act.

Section 10: Human Dignity

Section 10 of the Bill of Rights states that ‘everyone has inherent human dignity and the right to have their dignity respected and protected’.

In essence, human dignity relates to the right that every human should be treated with respect, regardless of race, gender, class etc., as per the various grounds noted in section 9 (3). This is not a right that has to be earned in any way and **is inherent** to and part of being human.

Section 12: Freedom and Security of the Person

Section 12 of the Bill of Rights reads as follows:

12. (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 freed from all forms of violence from both public and 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.

Freedom and security of the person includes the right to be free of violence whether from public or

private sources. Violence against another member of society is unconstitutional and has led to the abolition of corporal punishment in schools and jails.

Part of the right to bodily and psychological integrity includes the right to make decisions in relation to reproduction, which places the rights of the mother above those of a fetus. While this particular right may invite hot debate and differences of opinion, it is the mother's right to choose whether she wishes to keep a fetus or not.

The case study below illustrates the upholding of Ms. Carmichele's security of person, amongst other rights.

CARMICHELE v MINISTER OF SAFETY AND SECURITY & ANOTHER (CENTRE FOR APPLIED LEGAL STUDIES INTERVENING) 2001 (4) SA 938 (CC)

Right to dignity - right to freedom and security of the person - duty of state to protect women from sexual violence

Ms. Carmichele was assaulted in her home by a man who was previously in prison and known for his violent acts against women. This man had been released without bail in-between his arrest and the beginning of his trial for rape. The police, as well as the prosecutor, had recommended releasing him without bail.

Ms. Carmichele felt that the release of this man had endangered her rights and after a lengthy court battle in the High Court Ms. Carmichele's case was eventually heard in the Constitutional Court on the basis that a number of her constitutional rights had been violated via the release of the perpetrator.

The Constitutional Court stated that police and prosecutors have the obligation to protect against gender-based discrimination and protect the dignity, security and freedom of women.

Furthermore, prosecutors have to make available all evidence and findings when it comes to whether or not an accused person is released on bail.

Although the prior levels of courts had dismissed the appeal of Ms. Carmichele, the Constitutional Court decided that her case for damages was valid and referred the matter back to the High Court for the purpose of assessing the amount of the compensation to which she was entitled.

Section 16: Freedom of Expression

During apartheid the state implemented drastic forms of censorship to limit a range of political and artistic expression. Today, however, censorship is inconsistent with South Africa's constitutionally protected culture of openness and democracy.

Section 16 of the Bill of Rights reads as follows:

- (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.

The Constitution recognises that individuals in our society need to be able to hear, form and express opinions freely on a wide range of matters. However, as can be seen from the words above, the right to freedom of expression is not protected in all circumstances.

Nonetheless, Courts still cite the right as one that lies at the heart of our democracy, not only because it is important to the moral agency of individuals, but also in the search for truth.

AFRI-FORUM v MALEMA 2011 (6) SA 240 (EqC)

Right to Freedom of Expression – Hate Speech

An application was brought to the Equality Court asking for the banning of the African National Congress ('ANC') struggle song entitled 'dubula ibhunu' (shoot the Boer). It was alleged that the song had been sung at several rallies by the then controversial politician and ANC Youth League president, Julius Malema. It was argued that the song could be understood as advocating hatred against Afrikaans farmers in particular and whites in general.

Malema suggested that liberation songs like dubula ibhuna are part of South African heritage and must be preserved as part of the commemoration of the struggle against apartheid.

The court disagreed with the argument of the respondents. It noted that the media coverage of the song meant that it would be exposed to the entire public and not just those who attended these rallies. The Court decided to judge the words through their literal meaning and asked what it would mean 'to a reasonable listener' or the meaning that the targeted group would reasonably attribute to the words.

The court found that the words did in fact constitute hate speech because they undermined the dignity of, and were discriminatory and harmful to, an identifiable grouping in society.

Right to Freedom of Expression – Hate Speech

Penny Sparrow, a Kwa-Zulu Natal estate agent at the time of the incident, raised a social media storm with her controversial Facebook post where she likened black beach-goers to monkeys. This led to the ANC's approach to the court, alleging that her post constituted hate speech.

Section 10 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 prohibits hate speech providing that no person may publish, propagate, advocate or communicate words based on one or more of the prohibited grounds, against any person, that could reasonably be construed as demonstrating a clear intention to (a) be hurtful; (b) be harmful or incite harm; (c) promote or propagate hatred.

The Equality Court found that Sparrow's "words convey the message both explicitly and implicitly to the reader that black people are not worthy of being described as human beings – implicit in this is that they have lowered or sub-human intelligence."

The court found that the words posted by Sparrow constituted hate speech and comprised a serious infringement on the human dignity of black people in general.

As such, she was ordered to pay a fine of R150 000.

Section 17: Freedom of assembly, demonstration, picket and petition

A powerful way in which people may express their political and social views on current issues can be done through gathering and protesting peacefully. The freedom to assemble, demonstrate, picket and petition is an integral part of the democratic rights of a country's citizens. This form of holding powerful institutions to account as a collective is seen to form part of our participatory democracy and often was not available to South Africans during apartheid.

Section 17 of the Bill of Rights reads as follows:

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

It goes without saying that exercising this right can have a great influence on political parties and the political process in raising important issues. It also provides a means whereby citizens can enforce their rights outside the legal process and put pressure on the Legislature and Executive. Such events also help civil society groups to build support for their causes.

A prime example of this has been the recent student protests lead by the

#RhodesMustFall and #FeesMustFall movements who, through successful mass protest, were able to convince the state not to increase tertiary institution fees for the 2016 year.

SOUTH AFRICAN TRANSPORT AND ALLIED WORKERS UNION v GARVAS 2013 (1) SA 83 (CC)

Freedom of assembly

SATAWU organised a gathering of thousands of people to register certain employment-related concerns within the security industry. Despite taking precautions to manage their members, a serious amount of riot damage followed the gathering with several people getting injured and others arrested.

SATAWU was sued for the damage that followed the riot. However, SATAWU argued that they could not be sued because they had taken reasonable measures to prevent damages as is required by the Regulation of Gatherings Act 205 of 1993 and also that they could not have foreseen the riot that followed.

The Constitutional Court highlighted the importance of the right to freedom of assembly. It noted that this right is central to our constitutional democracy and 'exists primarily to give a voice to the powerless.'

This is true particularly for those who are politically and economically vulnerable, in which case, this may be the only mechanism available to them to express their legitimate concerns.

The court also commented that for many ordinary people this will be the primary tool through which they can 'meaningfully contribute to the constitutional objective of advancing human rights and freedoms.'

However, the court found that despite these principles and the provisions in the Act, such gatherings must still remain unarmed and peaceful. As a result SATAWU were ordered to pay for the damages that resulted from the riot.

Section 26: Housing

With the adoption of the Constitution over 20 years ago the Constitutional Court has since handed down 23 socio-economic rights judgments, 15 of those relating to the right to adequate housing contained in section 26 of the Constitution.

Section 26 of the Bill of Rights reads as follows:

- (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.

As can be seen from the wording above there is both a negative and positive aspect to the right to adequate housing, both preventing others from infringing a person's right to housing as well as placing a duty on government to provide housing to South Africans. Issues relating to both aspects have been brought before the Constitutional Court.

THE GOVERNMENT OF RSA & OTHERS v GROOTBOOM & OTHERS 2001 (1) SA 46 (CC)

Right of access to adequate housing

Mrs. Grootboom and others were evicted from their informal housing. In response to this action the group of people evicted wanted the municipal government to provide them with adequate emergency shelter or other types of housing until they had found a new permanent residence.

Their claim was based on section 26 of the Constitution which grants the right to adequate housing for everyone and which grants children the right to shelter.

The Constitutional Court noted in its judgement that whilst the Constitution does indeed require the state to provide for the basic needs of citizens including food, drinking water, access to housing, social security and health care, the state is not required to find substitute housing when evicting people from the current abode. The only requirement on the state is to take measures which allow its citizens to gain access to housing and social security.

PORT ELIZABETH MUNICIPALITY v VARIOUS OCCUPIERS 2005 (1) SA 217 (CC)

Evictions

Here a community of sixty-eight people, including twenty three children, occupied shacks located on privately owned land within the PE municipality. Some had been living on the land for as long as eight years. When the municipality attempted to evict them the occupiers replied that they were willing to leave if they were given reasonable notice and provided with alternative housing. The

municipality claimed they were not constitutionally bound to provide either alternative accommodation or land.

The court looked at South Africa's laws under apartheid where the State once had powers to force black South Africans from their land and force them to live in racially designated areas. This was the cornerstone of apartheid policy. The result was a 'grave affliction' on the dignity of forcibly removed people. It is effects such as these that the Constitution seeks to address.

The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE) was passed into South African law to deal with the legacy of apartheid and ensure that eviction processes are free from abuse and are carried out in a way that is consistent with the Constitution. Furthermore, Sachs J said:

'PIE expressly requires the court to infuse elements of grace and compassion into the formal structures of the law. It is called upon to balance competing interests in a principled way to promote the constitutional vision of a caring society based on good neighbourliness and shared concern.'

The court noted that the building of the shacks was done without the municipality's authority and were therefore situated unlawfully. However, the Court concluded that because of the duration of the occupation and the failure of the municipality to mediate before resorting to eviction proceedings, that it was not just and equitable to evict the occupiers. The Court ordered that the parties resort to mediation.

PRESIDENT OF RSA v MODDERKLIP BOERDERY (PTY) LTD 2005 (5) SA 3 (CC)

Eviction/Expropriation

In this case a large informal settlement had moved to and settled on privately owned land. Unhappy with this situation the owner of the land applied for an eviction order in the High Court. The community was so large that the police could not carry out the eviction order. The SCA agreed and ordered that eviction was not achievable under the circumstances and that the State must pay the private owner compensation in terms of the Expropriation Act. It also ordered that the community

was to remain on the land until such time as the State could provide alternative land for them to settle on.

The state claimed that the owner of the land was not entitled to the compensation.

The court found that it was the duty of the state to 'ensure that large scale disruptions in the social fabric do not occur in the wake of the execution of court orders, thus undermining the rule of law.' It could not ask a private owner then to look for alternative accommodation when that was government's duty. By not acting sooner as it should have, the state had allowed a situation to boil over to the point where it risked having serious potential to deteriorate the stability and public peace in the area.

The court ordered that the state had a number of options to ensure that it took reasonable steps to provide relief to the owner including purchasing the land or expropriating it.

OCCUPIERS OF 51 OLIVIA ROAD v CITY OF JOHANNESBURG 2008 (3) SA 208 (CC)

Duty to Meaningfully Engage

In this case the city wanted to evict more than 400 occupiers of two buildings located in the inner city, claiming that the buildings were unsafe and unhealthy. This decision by the city was part of an overall clearance policy whereby evictions were carried out in the middle of the night and without notice to the occupiers. Forced eviction in this case would have likely resulted in the building's occupiers becoming homeless or having to relocate to slum areas outside the city, cutting them off from livelihood opportunities.

The court found that the relationship between reasonable state action and the need to treat human beings with the appropriate respect and care for their dignity is a right by virtue of their humanity. Engagement is a two way process in which the city and those who are about to become homeless should talk to each other meaningfully in order to achieve certain objectives.

The court made it clear that the city had constitutional obligations toward the occupants. It was its duty to fulfil the objectives provided in the preamble of the Constitution to 'improve the quality of life of all citizens and free the potential of each person'. Most importantly, it must also respect, protect, promote and fulfil the rights in the Bill of Rights, the most important of which are the right to human dignity and the right to life. The Court noted that where a municipality has evicted people from their homes without first meaningfully engaging with them, then this would be an act which undermines its constitutional obligations.

Section 27: Healthcare, Food, Water and Social Security

Everyone has the right to health care services, for all their health care needs including reproduction. The citizens of South Africa also have a right to sufficient food and water, along with social security if they are unable to support themselves and their dependents.

This section of the Constitution, 27, reads as follows:

27. (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 dependents, 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.

The two case studies below illustrate the upholding of 27 (1) in terms of access to health care and the parameters that apply to the delivery of the right set out in 27 (3).

MINISTER OF HEALTH & OTHERS v TREATMENT ACTION CAMPAIGN & OTHERS (No 2) 2002 (5) SA 721 (CC)

Right to health care

The Treatment Action Campaign (TAC) and others wanted to enforce the provision of the Constitution dealing with access to health care in making the drug Nevirapine available to women in order to prevent the transmission of the HI-virus from mother to child during pregnancy.

In this case the state did not undertake the necessary measures to make this drug, which can significantly improve the prospects of giving birth to a healthy child, available.

As this right is enshrined in the Constitution, the state was found to have failed in its delivery thereof and was ordered to make the drug available to pregnant women with HIV in order to assist in the prevention of the transmission of the potentially deadly virus.

The right to health care obliges the state to make efforts to ensure that health care is readily available for everyone, although this does not mean that the state has to make sure everybody receives such treatment.

SOOBARAMONEY v MINISTER OF HEALTH (KWAZULU- NATAL) 1998 (1) SA 765 (CC)

Right of access to health care and emergency treatment

Mr. Thiagraj Soobramoney suffered with kidney problems as they did not function properly due to a stroke. The damage to his kidneys was irreversible, which meant that he would ultimately die of renal failure and the only way to prolong his life was regular dialysis treatment.

In his claim, he wanted the state to pay for his medical expenses with regard to the dialysis treatment, which he based on the right of access to health care services provided by the state. As this is a provision stated in the Constitution the case was heard before the Constitutional Court.

The matter was argued in court and in its judgment the court found that when it comes to the right to health care the Constitution makes clear that emergency treatment may not be refused to anyone.

The court made the distinction between emergency treatment and treatment of chronic diseases. In this matter Mr. Soobramoney suffered from a chronic disease and was not in need of emergency treatment and it was found that he could therefore not make a claim based on the right to health care.

The costs involved for the treatment of chronic diseases are much too high for the state to cover such treatment for everyone and thus the state can only guarantee emergency treatment for every citizen.

MAZIBUKO AND OTHERS v CITY OF JOHANNESBURG AND OTHERS 2010 (4) SA 1 (CC)

Section 27(1)(b): right to have access to sufficient water

The court was asked to answer the question of whether the city's policy to install pre- paid water meters in a Soweto community, which would otherwise only provide 6 kiloliters (or 25 litres per day) of free water a month, violated the community's constitutionally enshrined right to sufficient water.

The events that led up to this case were especially tragic in that two community members who attempted to put out a shack fire died after the pre-paid meter automatically disconnected their water supply because they had not first paid for more.

Both the High Court and the Supreme Court of Appeal (SCA) decided that the city did not have the legal authority to cut off the water to those who could not afford more than the free amount. The courts also found that the policy discriminated unfairly against the community's residents because residents in richer areas were not subject to the same policy, an infringement of the right to equality enshrined in the Constitution.

Although the Constitutional Court disagreed with the orders made by the two previous courts, it did impose a duty on the government to continually review its policies to ensure the progressive realization of socio-economic rights, or the progressive realization of the right to sufficient water in this case. The judgment has also been interpreted as reaffirming the view that social and economic rights adjudication is part of our broadening understanding of democracy as it helps to hold government accountable for its decisions relating to its policies and how it implements them.

Section 29: Education

Section 29 of the Constitution reads as follows:

29. (1) Everyone has the right –
 - (a) to a basic education, including adult basic education; and
 - (b) to further education, which the state must take reasonable measures to 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.

**GOVERNING BODY OF JUMAN MUSJID PRIMARY SCHOOL v AHMED ASRUFF ESSAY N.O. 2011 (8)
BCLR 761 (CC)**

Basic Education

In this decision, the Constitutional Court held that an eviction order acquired by a private owner on land which contained a public school could not be enforced where it would impact on the right to basic education and the best interests of the child in terms of the Constitution.

The school was established in 1957 and transferred to the KZN Education Department in 1997 by a trust. However, when the trust did not receive the monies owed to it by the department, it sought to have the public school closed, terminating its right to occupy the property.

The High Court supported the decision of the trust, a finding the Constitutional Court dismissed on appeal. The court reasoned that ‘unlike some of the other socio-economic rights, [the right to basic education] is immediately realisable.’ Therefore, any attempt to limit this right must be ‘reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.’ Rights, like that of property rights, may in such circumstances be limited to ensure that the best interests of the child are upheld and consistent with international standards.

The court eventually allowed an eviction order but only once the MEC had found alternative schools for the students, ensuring that their right to basic education was protected.

Section 32: Access to Information

Section 1 of the Constitution provides that it is a principle that the South African system of government is based on several values, including a multiparty system of government ‘to ensure accountability, responsiveness and openness’. The right of access to information promotes these values.

Section 32 of the Bill of Rights states:

- (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.

The Promotion of Access to Information Act 2 of 2000 (PAIA) was passed to give effect to the right to access to information as contained in the Constitution. Part of the objects of the Act are ‘to promote transparency, accountability and effective governance of all public and private bodies, including but not limited to, empowering an educating everyone.’

BRUMMER v MINISTER FOR SOCIAL DEVELOPMENT AND OTHERS 2009 (6) SA 323 (CC)

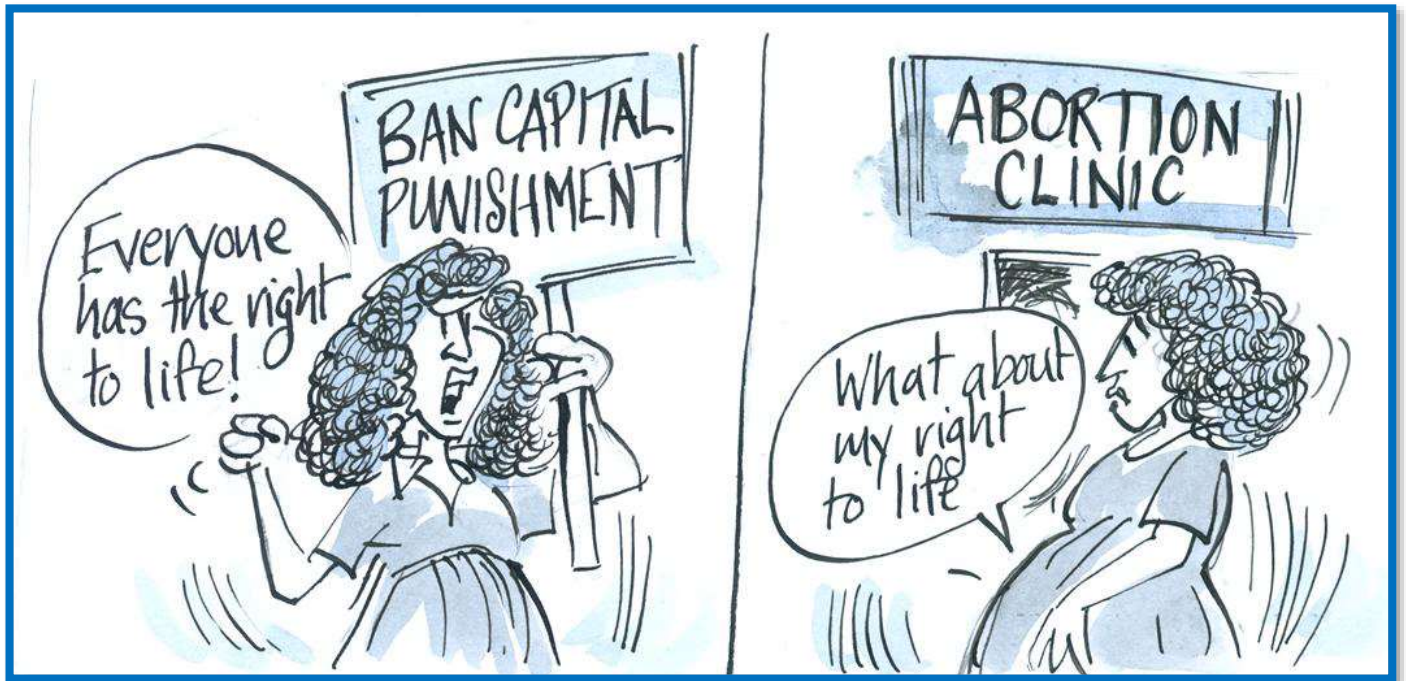
Access to information

In this case Mr Brummer, a journalist, requested certain documents held by the Department of Social Development using PAIA. The information related to a government tender that the department was said to have awarded to IT Lynx Consortium unlawfully.

In this case the Constitutional Court explained the importance of the right to access to information sourced in the values mentioned above.

The court noted the interconnectedness of the right to information and that it informs other rights included in the Bill of Rights. In particular, it informs the right to freedom of expression which itself includes the freedom of the press and media to receive and impart information and ideas. The court held that access to information in this particular context is instrumental ‘to accurate reporting and thus to imparting accurate information to the public.’

South Africa's Bill of Rights is one of the most progressive in the world. The state and all South African citizens are obliged to embrace the value system it portrays in the interests of the development of a social order that provides a better life than that of the past. This requires everyone to take their human rights and those of their fellow citizens seriously.



A full knowledge of your rights and a willingness to claim them when you feel that they are violated or infringed is the first step towards attaining the type of society envisaged in the minds of the founders of our Constitution. The product of all the labour and effort that went into creating our new order will go to waste if human rights are not respected, protected, promoted and fulfilled.

It is up to all citizens to take responsibility for this and to claim their rights when they feel they are victims of short delivery or non-delivery of their constitutional rights, including those set out in the Bill of Rights. The right to Life creates an interesting discussion when one considers that capital punishment has been banned – and abortion legalised. What are your views on these two positions on Life?

6. The Government of the Republic of South Africa

After the elections in 1994 it became clear to those in power that in order for South Africa to become



a democracy, there needed to be a change in the form and structure of government to one that invited more participation from the people in the country.

The organisation of the state is divided into three branches:

1. The **Legislative** branch, where laws are made, amended or repealed.
2. The **Executive** branch, which ensures that the laws and court decisions are properly carried out, enforced or applied.
3. The **Judiciary**, which is where legal matters are

referred, disputes attended to and law interpreted.

This division of powers, called the **separation of powers**, forms the core of the democracy in South Africa as it does not allow for any one division of government to have 'all power'.

In other words, it provides a vital system of '**checks and balances**' in making sure that legislative, executive and judicial decisions are independent of one another.

A brief overview of each of the divisions is provided below.

The Legislative Branch of Government

Parliament is the legislative branch of government at national level and is representative of the people. It is divided into:

The National Assembly

- The National Assembly is the upper house of Parliament.
- Its members are chosen by the people in national elections every five years.
- Half of the 400 members of the National Assembly are elected from national party lists and the other half from provincial lists.
- The composition of the National Assembly is determined by means of proportional representation.
- The political party determines who stands on these lists and also determines the order in which they appear.
- Citizens can only choose the party and not individual candidates when casting their vote.
- This means that the lists are closed.
- The number of seats which can be filled by elections for the National Assembly per province is related to the population of the respective province.
- This means that from the 200 available seats for people from the provincial list, more seats will be filled by larger provinces.
- The men and women who are elected are commonly called MP's (Members of Parliament) and the Chairperson of the National Assembly is called the Speaker.

The National Council of Provinces

- The National Council of Provinces is the smaller house of the South African Parliament.
- In contrast to the National Assembly it only has 90 members.
- This means that each province, regardless of the population, is represented by 10 members, made up of the Premier of each province, six permanent members and three temporary delegates.

- The National Council of Provinces' duty is to protect and promote the interests of the provinces at national parliamentary level.

At provincial level, legislative authority is given to the provincial legislature, which consists of between 30 and 80 elected members. The number of members per province may differ as it depends on a formula created at national level.

At local level, legislative authority is given to the municipal councils, whose members are elected locally. Ward councillors can be voted for individually and proportional representation also exists at this level.

Parliament may pass legislation at national level in accordance with the Constitution and Bill of Rights and Parliament may also amend the Constitution provided there is a two-thirds majority vote for such amendment in the National Assembly.

Foundational aspects, as set out in the 34 Constitutional Principles of the Interim Constitution, require a 75% majority before they can be amended. These 34 principles, which summarise Schedule 4 to the Interim Constitution, are contained in the table below.

I	Sovereign state with common citizenship and a democratic system committed to achieving equality.
II	An entrenched Bill of Rights, including all universally accepted fundamental rights, freedoms and civil liberties.
III	Prohibition of discrimination.
IV	A supreme and binding Constitution.
V	Equality before the law and an equitable legal process.
VI	Separation of powers between legislature, executive and judiciary so checked and balanced as to ensure accountability, responsiveness and openness.
VII	An appropriately qualified, independent and impartial judiciary.

VIII	Multi-party democracy.
IX	Freedom of information.
X	Adherence to formal legislative procedures at all levels of government.
XI	Acknowledgement and protection of the diversity of language and culture.
XII	Collective rights of self-determination as regards linguistic, cultural and religious associations.
XIII	Recognition of traditional leadership.
XIV	Provision for participation of minority political parties in the legislative process.
XV	Special procedures with special majorities for amendments to the Constitution.
XVI	Government structured at national, provincial and local levels.
XVII	Democratic representation at each level of government.
XVIII	Definition of the powers and functions of national and provincial governments.
XIX	Exclusive and concurrent powers at national and provincial levels of government.
XX	Appropriate and adequate legislative and executive powers at each level of government so as to allow them to function effectively.
XXI	A set of criteria applicable to the allocation of powers to the national and the provincial governments.
XXII	The national government shall not exercise its powers so as to encroach upon the

	geographical, functional or institutional integrity of the provinces.
XXIII	In disputes over allocation of legislative powers precedence shall be given to those of the national government.
XXIV	A framework for local government powers, functions and structures.
XXV	Fiscal powers and functions for the various spheres of government.
XXVI	Each level of government allocated an equitable share of revenue.
XXVII	The creation of a Financial and Fiscal commission.
XXVIII	Fair labour practices and the right of employers and employees to organise.
XXIX	An independent and impartial Public Service Commission, a Reserve Bank, an Auditor-General and a Public Protector to ensure a high standard of professional ethics in the public service.
XXX	An efficient, non-partisan, career-orientated public service to loyally execute the lawful policies of the government of the day.
XXXI	Security forces (police, military and intelligence) that act in the national interest and are prohibited from furthering or prejudicing party political interest.
XXXII	Transitional provisions applicable until 30 April 1999.
XXXIII	No national election before 30 April 1999.
XXXIV	Reservation of the right to self-determination by any community sharing a common cultural and language heritage, whether on a territorial basis or any other recognised way.

The Executive branch of Government

The executive power of South Africa is vested in the President, together with the Cabinet. The Cabinet includes the President, the Deputy President and the Ministers. Deputy Ministers are not part of the Cabinet.

It is the duty of this branch of government to:

- carry out national legislation;
- carry out and develop policy.

In other words, the executive is responsible for carrying out the daily business and tasks of the government. It is accountable to Parliament.

The Ministers each have their own portfolio, under which they deal with the matters on the table, for example in Health Care; Finance and Home Affairs.

It is this branch of government that represents South Africa in other parts of the world.

The Judiciary

The judiciary is the smallest branch in the government system, whose duty it is to apply the law to disputes brought before it. The judiciary must make sure that the laws of South Africa are obeyed by all, including the government.

In contrast to the other two branches, which are made up of politicians who work along the lines set out by their particular party, the judiciary has to be **impartial and non-political**.

The judiciary forms the system of courts within a democratic state, which are **independent and subject only to the authority of the Constitution and the law**. Courts must apply the law fairly and without fear, favour or prejudice. It is the duty of every judge and judicial officer to apply the law properly and in full – i.e. it cannot be applied selectively.



Nobody, not the President, a member of Cabinet, an organ of state or any individual may interfere with the way in which the courts work. It is of paramount importance that the courts remain **independent, impartial and effective** and that they

retain the respect of the people, along with **their own dignity**.

In addition to the separation of powers via the legislature, executive and judiciary, Chapter 9 of the Constitution provides for the establishment of state institutions that are intended to strengthen constitutional democracy. These institutions are independent and subject only to the Constitution and the law, and they too, must be impartial, exercising their powers in the same fair manner as the courts, without fear, favour or prejudice.



7 The Institutions supporting Constitutional Democracy

Chapter 9 provides for the establishment of the following institutions which support Constitutional democracy:

- The Public Protector (ss 182-183)
- The South African Human Rights Commission (ss184)
- The Commission for the Promotion and Protection of Cultural, Religious and Linguistic Communities (ss185-186)
- The Commission for Gender Equality (ss187)
- The Auditor-General (ss 188-189)
- The Electoral Commission (ss190-191)
- There is also an Independent Broadcasting Authority to ensure fairness and a diversity of views in broadcasting in South Africa.

All of these institutions, albeit independent and impartial, are accountable to the National Assembly insofar as they have to report their activities and provide an overview on how well they are performing in their functions to the National Assembly at least once a year.

The 'ground rules' with regard to the formation and make up of each of the Chapter 9 institutions are as follows:

- The Public Protector and all the members of the various commissions noted above have to be South African citizens.
- Within the commissions, gender must be represented in the same proportion as is visible in the country.
- It is the task of the President, on the recommendation of the National Assembly, to appoint

the members of the commissions as well as the Public Protector and the Auditor-General.

- The National Assembly has to approve of the Public Protector and the Auditor-General by at least a 60% majority and at least 50% of the members of the National Assembly have to approve of the members of the commissions.



The Public Protector (PP)

The PP investigates any improper or irregular conduct or action of the government, on any level of government, in respect of any matter.

The only exception to the above is the PP's limitation with regard to the investigation of court decisions as these can be investigated via the process set out under the rules that apply to the Judiciary. These involve appeals and reviews.

The PP may act upon own initiative or upon complaint by the public.

Being the PP means being accessible to the public at any time, and thus this person holds an important office in linking the public and the government.

The PP has the power to investigate the actions of the government, hold the government accountable if errors in the implementation of law(s) are discovered and provide a solution to the

problem under investigation.

Following any given investigation the PP writes a report explaining what was done and how the matter proceeded.

This report (above) is then openly accessible to the public unless national legislation prohibits a publication on the matter discussed.

The Public Protector's remedial action is legally binding, compliance is not optional.

The South African Human Rights Commission (HRC)

The HRC is tasked with promoting respect for and the attainment of human rights in South Africa, as well as monitoring the process of the development of human rights.

The powers of the HRC are laid down in national legislation which gives the commission the powers to investigate the observance of human rights and to take steps to punish where there has been a violation of such human rights.

The commission is also tasked with educating society about human rights and to carry out research in this field.

The HRC is able to query various organs of state as to what they have done to further develop human rights and from this information, put together a report that is inclusive of the details of its own performance to the National Assembly once a year.

The Commission for the Promotion and Protection of Cultural, Religious and Linguistic Communities

This commission has the primary objective to foster and promote respect for different cultures, religions and languages and their rights.

It also has the task of promoting national unity by means of friendship; humanity; peace and tolerance among different communities.

The commission is required to monitor the development of how the different communities get along with each other, and via an annual report make suggestions regarding further steps to be taken to achieve the goals in this regard.

The Constitution requires that the formation and structure of the commission reflects the composition of the country, in terms of cultural diversity as well as gender distribution.

The Commission for the Promotion and Protection of Cultural, Religious and Linguistic Communities is required to work closely together with the Human Rights Commission.

The Commission for Gender Equality

This commission is responsible for promoting and developing respect for gender equality.



It has the power to monitor; investigate; educate; lobby; research and advise on how these goals can be best achieved and as with the other commissions, has to report annually on the development of gender equality to the National Assembly.

The Auditor-General (AG)

The AG is required to audit and report on the finances of all government departments, national,

provincial and local.

The AG has access to all financial statements of all national and provincial state departments and their administrations as well as municipal departments

The AG may audit and report on the accounts, financial statements and financial management of any institution funded from the National Revenue Fund or a Provincial Revenue Fund, by a municipality or any institution that is authorised to receive money for a public purpose.

All reports from this office are to be made public.

The Electoral Commission (EC)

The EC has to manage the elections on national, provincial and municipal levels. It is the duty of this commission to ensure that elections are free and fair.

The EC has to declare the results within the period of time which is mentioned in the national legislation.

The National Broadcasting Authority

National legislation must establish an independent authority which will regulate broadcasting in the interest of the public.

The authority is tasked with ensuring fairness and the same diversity in all broadcasting media as represented in South African society.

The removal of the Public Protector and the Auditor-General from office can only take place on proof of their unfitness to perform their job because of misconduct, incompetence or incapacity. They can only be removed by the President if at least two-thirds majority (66%) of the National Assembly is in favour of removing the person from their position.

The National Assembly needs to adopt the removal of a commissioner from a commission by a majority of 50%. When the National Assembly passes such a vote with the necessary majority, the President has to act and remove that person from office.

8 The Pillars of Democracy

The word democracy derives from the Greek word *demokratia*, which means **public government**. This comes from “people” or *demos* and “power” or *kratia*.

Democracy is thus the **rule by people**, meaning that every citizen should have a say in which way and by whom he or she wants to be governed.

There are two different forms of democracy – i.e. direct or indirect:

- Direct democracy means that everybody sits in the assembly and expresses his or her own views. This is not the form we have today.
- In an indirect democracy we have elections in which we vote for someone to represent our view in the assembly.

The concept of democracy itself cannot be limited to one approach, but all types of democracy have the following two characteristics:

1. All citizens have equal access to power.
2. All citizens enjoy a set of freedoms and liberties.

The guarantee of these basic rights does not come automatically. There are three main rules which are present in all democracies:

- i. democracies have a voting system;
- ii. citizens of democracies enjoy human rights which allow for freedom of speech and the freedom of the press;
- iii. only those who break the law can be faced with a trial and court trials will be exercised in a fair manner.

In order to ensure that it produces good governance and accountability to the people, a democratic system of government is underpinned by a number of basic principles. Some of these are noted below:

- In democracies **all adults are allowed to vote freely** or select a representative to act on their behalf.
- Elections need to be conducted on a **regular, free and fair basis**.
- Democracies rest on the principle of **majority rule**, meaning that the party with the most votes will be the party in power.
- **Individual rights** such as the freedom of political expression; freedom of speech and the freedom of the press are central concepts in a democracy. These freedoms need to be guarded not only by the government, but also by civil society, in order to ensure their preservation.
- Civil society members need to be aware of the rights that democracy grants them and make use of them, so as to prevent the government and those in power from abusing these rights.
- The abuse of power needs to be controlled, which is what the **separation of powers** sets out to ensure so that no one branch of government can accumulate too much power and make wrongful use of the mandate it has been given by the people.
- In most democracies the executive and the legislature are strongly connected simply by the kind of work they are conducting, but are usually kept in check by the **independence of the judiciary**, which reviews governmental acts and conduct when called upon to do so by anyone dissatisfied with a new law, or with the way in which government is conducting itself.
- Democracies have **at least a two-party system** but usually, as in South Africa, there are more parties competing against each other in order to represent the interests of the people in the best possible way. The majority is determined by means of general and competitive elections.

- Although the party with the most votes then becomes the ruling party, such party has to **pay attention to the interests of the minority** as well in order to avoid the so-called tyranny of the majority.
- The wishes of the minority also have to be heard and therefore the ruling party can be – and is - **challenged by the opposition**, which consists of the parties that represent the votes of the minority.
- The **opposition is also a part of the checks and balances** mentioned previously as they have the ability to question the actions of the government.

In addition to the separation of powers and the various checks and balances provided by this type of organisation of government, there are certain other features that are necessary to ensure the good performance of a democratic system. These include the following:

- Participation
- Rule of law
- Transparency
- Responsiveness
- Consensus orientation
- Equity and inclusiveness
- Effectiveness and efficiency
- Accountability

Let's consider each of these features in a little more detail.

Participation:

Essential to a well-performing democratic system is its citizens.



Participation of and by those who are being governed is the one characteristic which makes a democratic system accessible and different from an absolute monarchy or a dictatorship.

The participation in elections via voting, or running for office, allows civil society to make a difference and actively partake in shaping the political landscape of a country.

Rule of law:

The rule of law is an important instrument in a democracy. This requires a legal framework that provides for the drafting of laws in a fair and impartial manner. It also ensures that the judiciary is independent in the application and enforcement of such laws.

Transparency:

Transparency is vital in a democracy. It means that not only must decisions be taken according to the rules laid out in legislation and legal documentation, but that all the necessary and relevant information around a decision / practice / ruling is freely accessible to the people.

Responsiveness:

Responsiveness ensures that the responsible bodies and institutions of a democracy respond to pleas from other branches of government and the people, and do so within an acceptable timeframe.

Consensus orientation:

In a democracy, a multi-party system represents the viewpoints present within society and these viewpoints have to be taken into account within the governance of a democracy. A consensus or an agreement should mirror mediating negotiations between the different parties.

Equity and inclusiveness:

Equity and inclusiveness need to ensure that people have the feeling they are involved in the decision-making process. Thus the people in power need to ensure that certain groups of society are not excluded from society. All groups must have equal opportunities to express their opinions and be heard.

Effectiveness and efficiency:

Effectiveness and efficiency are needed to ensure that the institutions within the several branches of government produce adequate results that meet the needs of the ordinary people – i.e. those from which they have received their mandate.

Accountability:

Accountability is possibly the **most important characteristic of good governance** of a democracy and applies to every South African, no matter whether placed in a governmental institution or outside thereof.

Accountability requires that the **government and civil society** both be held accountable for their actions. It is a two-way street.

For the government, accountability is 'hand in glove' with the duty that comes with the elected privilege of serving the people. For those who wish to live in a truly democratic society, it is their duty to not only hold such government to account in asking them to justify their decisions and explain their actions reasonably, but also to live by the rules set out in the Constitution.

These are the means of making democracy work for everyone and successful democracies are those in which peace, progress and prosperity are achieved.

The following two sections of this book are devoted to more about the rule of law and accountability.

9 The Rule of Law

The rule of law is a concept that denotes that all decisions need to be made in accordance with law. It is one of the measures that attempts to ensure that decisions cannot be taken at the variable will of the people in charge, the leaders of the nation. This would be 'the rule of men' and is the exact occurrence that the rule of law is designed to prevent.

Following the rules and laws set out in the Constitution and in legislation ensures stability and equality before the law within the country. Under this system the citizens are protected from the arbitrary exercise of power.

Under the rule of law, all persons; institutions; public and private entities are accountable to the laws that have been made by the state. The government is as bound by the rule of law as any other and is therefore totally accountable for the action it takes.

Nobody is exempt from the rule of law.

The concept of the rule of law includes a number of principles which need to be respected in order for such rule to function properly. The important principles include the following:

- Law is supreme
- Everybody is equal before the law
- Law is applied in a fair way
- Separation of powers
- Accountability of law
- Avoiding arbitrariness
- Legal certainty
- Transparency in legal proceedings

The points below highlight a few basic facts about the law and the application thereof.

- i. The law is a body of rules set by the state to regulate conduct and punish wrongdoings.
- ii. National law is superior to all other laws except the Constitution, which is the supreme law of the land.
- iii. The Constitution is the highest-ranking piece of legislation and therefore every other law and/or court ruling must illustrate cognisance of and respect for the principles laid out in the Constitution.
- iv. The law is binding on everyone in the same way and also binds the President and highest level of government officials.
- v. It must be applied equally to all citizens regardless of their status, must be non-discriminatory, must observe human rights and must ensure the dignity of every human being.
- vi. The state is obliged to respect, protect, promote and fulfil the rights contained in the Bill of Rights, in the application of the law.

Citizens need to be aware of their rights and obligations in order to assist in the maintenance of the rule of law and need to know what they can expect from the system. Society needs to be aware of the fact that only a breach of the law can lead to punishment, and not the mere will of the authorities in charge.

Since human beings, on whom the system eventually relies, are not infallible it is of utmost importance that all citizens know their **rights and duties within the entire system of the rule of law**, in order to be able to uphold it, as well as detect malfunctions and demand changes.

The World Justice Project, which is a non-profit organisation committed to the advancement of the rule of law around the world, refers to a rules-based system in which the following universal principles are upheld:

The government, its officials and agents are accountable under the law.

The laws are clear, publicised, stable and fair, and protect fundamental rights, including the security of persons and property.

The process by which the laws are enacted, administered and enforced is accessible, fair and efficient.

Access to justice is provided by competent, independent, and ethical adjudicators, attorneys or representatives and judicial officers who are of sufficient number, have adequate resources, and reflect the make-up of the communities they serve.¹

The World Justice Project (WJP)

For those who wish to learn more about the WJP it is recommended that a visit be made to www.worldjusticeproject.org

The WJP has a Rule of Law Index which is a quantitative assessment tool designed by the World Justice Project to offer a detailed and comprehensive picture of the extent to which countries adhere to the rule of law in practice. There are nine factors, further broken down into 52 sub-categories that provide a comprehensive picture of rule of law compliance.

The nine factors are:

1. Limited Government Powers
2. Absence of Corruption
3. Order and Security
4. Fundamental Rights
5. Open Government

FOOTNOTE:

1 http://en.wikipedia.org/wiki/Rule_of_law

6. Effective Regulatory Enforcement
7. Effective Civil Justice
8. Effective Criminal Justice
9. Informal Justice

10 What is Accountability?

Accountability is a broad concept, closely connected to responsibility, liability and transparency. Whilst difficult to define in a manner that is applicable to all contexts, one definition considered to be rather all-encompassing reads as follows:²

‘The obligation of an individual or organisation to account for its activities, accept responsibility for them, and to disclose the results in a transparent manner. It also includes the responsibility for money or other entrusted property.’

Being accountable applies to everyone, in various ways. It applies to agreements and contracts; to governments, officials and politics; to professionals; employers; employees and families ... and more.



Everyone, no matter who they are, **is accountable for their actions and responsible for them**, in a number of different daily situations. For example: getting up in time to get to school; feeding, clothing and sheltering one's dependents and generally *'doing as you would be done by'*.

Accountability is of tremendous importance in a democracy and to some extent helps to manage the risk that politicians may govern the citizens without having a mandate to do so. In a democracy,

FOOTNOTE:

2 www.businessdictionary.com/definition/accountability

the power lies with the people and thus it is the people who have the 'authority' and 'mandate' to hold those who are in power to account.

For the purposes of this handbook the emphasis on accountability is focused upon governance and accountability – and what this means at election time.

Let's consider how the free and fair election process in South Africa acts as a means of holding those in power to account.

The constitutional right lying at the heart of the election process is section 19 of the Bill of Rights which reads as follows:

- a. Every citizen is free to make political choices, which includes the right –
 - i. to form a political party or cause.
- b. Every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution.
- c. Every adult citizen has the right –
 - i. to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and
 - ii. to stand for public office and, if elected, to hold office.

During the elections (on all levels, not just a national level) citizens have the opportunity to express their feelings about the various political parties in general and about the job the governing party in power is doing. Elections are a most critical moment for parties, especially the governing party, as their largest fear is to lose office due to a lack of public support.

Election time is the toughest competition parties can face in a democracy, as in a multi-party system all the parties are fighting for the support and votes of the citizens of the country. Along with this competition for votes come the promises of each party, which will be expected to be turned into reality if and/or when such party wins and comes into power. However, after the elections are over and the results known, it always remains to be seen whether the promises are kept.

The performance of the governing party and its adherence to the promises made are constantly evaluated by citizens between elections and the voters who put the party in its position via contributing to the majority vote, constantly assess whether the party is being accountable with regard to what it has promised.



Usually when voters are not satisfied with one party they can express their dissatisfaction by giving their vote to another party in the next election.

Although in reality many people have one party which they loyally support, when their wishes are not respected to the extent that they expected, they often refuse to vote again. It is important to note, however, that in this situation that particular citizen member is not being accountable for his or her actions as a member of a democracy as **voting is an important duty of each and every member of civil society living in a democracy.**

Voting and the influence citizens have, makes the difference between a democracy and many other forms of government where the citizens do not have the power to influence the future.

If too many people neglect to vote and do not actively participate in the voting procedure made available to them in a democracy, the various political parties will lose their respect (and fear) of elections and in so doing, stop bothering with accountability. This outcome benefits no-one.

All in all, elections are the perfect moment for citizens to express their opinion and also to hold the party in power accountable for its actions. Without their support and vote, the party would not be

able to remain in power.

Between elections citizens can still exact accountability, which is what service delivery protests are about, as are the demands for the fulfilment of promises made.

While protests, complaints and demands have a role to play, they often have limited value in getting the government to do what it should and thus the surest form of exacting accountability is via the process of litigation. The litigation process involves asking the courts to decide on the subject matter of the protests, complaints and demands.

If the law supports the entitlement of the nation to the subject of the protest, the complaint or the demand, the courts will order the government to deliver what is required.

There are many examples of activists who have succeeded in court in holding the government to account and to be more responsive to the needs of ordinary people, which is made possible by the various systems put into place in our Constitution.

KHAM AND OTHERS v ELECTORAL COMMISSION AND ANOTHER 2016 (2) SA 338 (CC)

Free and Fair Elections

In this case the Constitutional Court set aside the results of a number of by-elections in the Tlokwe Local Municipality and ordered fresh by-elections that were free and fair.

The court found that the Independent Electoral Commission (IEC) had failed to comply with its statutory obligation to ensure that voters were registered in the voting district in which they are ordinarily resident.

In stressing the importance of the right to vote and the need for elections to be free and fair, the court referred to the following passage written by Sachs J in the prisoners' vote case where it was said:

'Universal adult suffrage on a common voters' roll is one of the foundational values of our entire constitutional order. The achievement of the franchise has historically been important both for the

acquisition of the rights of full and effective citizenship by all South Africans regardless of race, and for the accomplishment of an all embracing nationhood. The universality of the franchise is important not only for nationhood and democracy. The vote of each and every citizen is a badge of dignity and personhood. Quite literally, it says that everybody counts.'

11 What does Accountability entail for you?

As pointed out in the previous section, citizens have the power to increase the responsiveness of the government by showing that they are observing and monitoring the actions of the government and voting accordingly. Elections are one of the key elements in increasing responsiveness, as it is a means via which civil society can directly express its opinion.

But what happens if there is the need to hold the government accountable in between elections?

There are various checks and balances that ensure that the government acts within the boundaries of the law. These include legal protests; the lodging of complaints with the Chapter 9 institutions and litigation when necessary.

It is important to remember, however, that while civil society may choose various means via which to hold the government to account in demanding their rights, it is also the duty of each member of civil society to behave in an accountable manner, themselves.

Let's take the situation of drunken driving as an example.

If one suffers the loss of a loved one who is killed by a drunken driver, it stands to reason that there will be a need to see justice served in ensuring that such driver is appropriately punished. While justice will not bring back the lost loved one, it might help ease the pain a little to know that there has been some penalty or cost for the guilty party in having behaved so irresponsibly by driving with too much alcohol in his blood stream.

If, however, the one who has suffered the loss is guilty of driving over the legal limit (whether 'drunk' or not) him or herself whenever it suits them – are they behaving in an accountable manner themselves?

Can one deem it 'acceptable' that such an individual has the right to claim a right, yet chooses to ignore the rules of society in his or her own life?

Being accountable as a member of civil society means one cannot choose to ignore the parameters and boundaries of the law when suits them, yet also expect the law to uphold a right when required.

Accountability, as noted previously, is a two-way street.

An excellent example of a member of civil society holding the government to account via litigation is that of Hugh Glenister versus the President of the Republic of South Africa and others.

GLENISTER V PRESIDENT OF RSA 2011 (3) SA 347

- a. The fundamental issue in this case was whether national legislation that established the Directorate for Priority Crime Investigation, commonly referred to as the Hawks (DPCI) and simultaneously the dissolution of the Directorate of Special Operations, known as the Scorpions (DSO), was unconstitutional or not.
- b. In their judgment the Deputy Chief Justice Moseneke and Justice Cameron and three other Constitutional Court justices concurred, ruling that Chapter 6 of the South African Police Service Act 68 of 1995 as amended was incompatible with the Constitution in that it fails to secure a sufficient degree of independence for the DPCI.
- c. 'In this regard the Court made two cardinal findings:
 1. Firstly, it held that the Constitution obliges the state to establish and maintain an independent body to combat corruption and organised crime effectively.'

This obligation was inferred from both the Constitution and international law treaties which are binding on the South African state.

The Court made a concerted effort to point out in its judgment that endemic corruption undermines the very fabric of the rights enshrined in our Bill of Rights and in so doing, poses a threat to our democracy.

2. 'Secondly, the Court held that the DPCI was not sufficiently insulated from patent political influence in its structure and functioning.'³

FOOTNOTE:

3 www.ifaisa.org – The Glenister case



What the Court was noting in this regard was that if the DPCI is not sufficiently independent, it would be vulnerable to political interference.

This would be due to its activities being coordinated by the Cabinet and a Ministerial Committee determining policy guidelines with regard to its functions, as well as dictating what offences would be considered to be those of national priority.

This majority judgment can be considered to be a singular victory for constitutional democracy and the South African public can be both grateful for, as well as learn from, the courageous actions of Mr. Hugh

Glenister, who demonstrated very clearly the **right of ordinary citizens to hold the government to account** for its conduct measured against the Constitution.



12 An overview of the South African Justice System

and getting access to justice via the courts

As noted in the section titled the Bill of Rights, section 35 of the Constitution states that persons who have allegedly committed a criminal offence have certain basic rights, as follows:

- The right to be informed of their rights.
- The right to appear before a court as soon as is reasonably possible.
- The right to consult with a legal representative – or to be given one if affordability is an issue.
- The right to a fair trial.

As the courts are independent of the legislature and executive branches of government, there can be no interference with the application of the law within this branch of government.

Section 166 of the Constitution sets out the structure of the South African court system – and is illustrated via the diagram at the end of this section.

There is a difference between criminal law and civil law, which is explained below.

Criminal matters are matters relating to the breaking of the law of the state.

Civil matters generally refer to matters where disputes between individuals, corporations and departments of state such as claims for damages or matters of status (examples: divorce; insolvency; lunacy) are involved. A great deal of civil litigation is between the public and the state. Public interest litigation to secure rights falls into this category.

Criminal charges may be brought against anyone and everyone who is alleged to have broken the law. Every citizen including those people working for the government in the public administration may be charged with criminal offences. This includes public service officials and also members of the police.

Examples of criminal offences include:

- Murder
- Assault
- Rape
- Theft
- Trespassing
- Public violence
- Corruption

In civil claims, a person brings a case to court against another person or a company or organisation or the state. In such cases you can claim money that someone owes you or you can claim compensation payments for such harm as was done to you.

Examples of civil problems are:

- Divorce
- Eviction
- Attack on your good name (defamation)
- Damage for injuries caused by negligent driving
- Breach of contract

You can also file a lawsuit against the government if you think the government is not fulfilling its obligations laid down in the Constitution, as noted in the Glenister case in the previous section. The Bill of Rights identifies basic needs such as health care; shelter; education; drinking water and food. If the government does not make any effort to provide you with access to these basic rights you can hold those in authority accountable to fulfil their obligations under the Bill of Rights.

There is a separation between getting access to justice in a criminal case and a civil case, as the route taken in gaining access to justice, as well as the proceedings, is different.

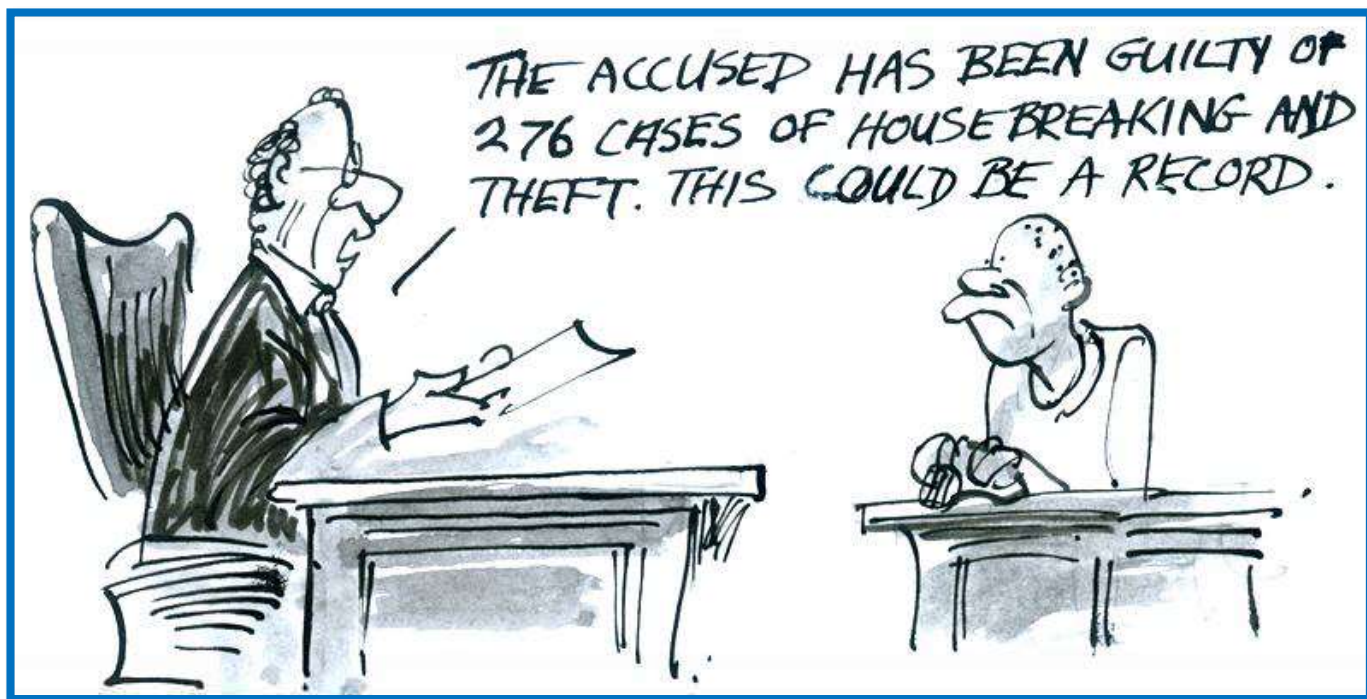
The difference in access to justice between criminal and civil cases is set out in more detail below via two fictitious case studies.

Access to justice in criminal cases

Fictitious case study 1:

You are in town and you enter a new electronics store. You have always wanted a computer and you see your chance of getting one. You decide on the model that is on display in the store. Many of the computers are still packaged in the store and you pick one of the boxes up to take a closer look. Nobody pays any attention to you or asks if they can be of assistance. The employees are very busy attending to other customers and nobody looks at you. You carry the computer in the direction of the tills, but none are free, the queues are long and so you move on. Since it seems so easy to do, you start to leave the store, setting the alarm off. As the alarm has gone off a number of times that day already, nobody really pays attention and you move on quickly, your new computer with you.

What you do not know is that a store employee witnessed all of the above happening and is aware that you left the store without making a payment. He alerted the police, gave a detailed description of you and backed the story up with the surveillance camera footage. Various simple investigations result in the confirmation of your identity and location of your address. A few hours after you return home the police are at your door and you are confronted with the reported theft. The police look around your room and find the box with the brand new computer in it. The serial number is identical to the one the store reported stolen.



The criminal process involves the following actions:

1. You will be asked to accompany the police to the police station.
2. At the police station your name and other personal details will be taken; you will be informed of your rights – i.e. ‘the right to remain silent and that everything you say can and will be used as evidence’ and that you have the right to legal representation.
3. If you do not have a lawyer of your own you will be advised that you may apply for legal aid.
4. According to the law, you must appear before the court within 48 hours.
5. Due to the type of crime, theft, and value of item stolen you will appear before a Magistrate in the Magistrate’s Court.
6. If you do not engage your own lawyer, you will be allocated a Public Defender, who is the person who helps to defend those people charged with a crime. The Public Defender will help you organise the bail money and try to find witnesses for you, if possible.
7. As the collection of evidence may take some time, you may be released for the period between when you were arrested and charged and the day of the trial – on ‘bail’.

8. Bail is the condition on which money is paid by you to the court and is intended to ensure that you show up for the court trial. Bail is issued with various conditions. If you do not violate these, you will receive the money back, irrespective of the outcome. Some of the common conditions are:
- Showing up for the trial on the set date.
 - Not conferring with state witnesses.
 - Contacting the local police every day.
 - Staying at the same address from the time of release to trial.
1. Bail is not an automatic right. If the court considers that you may tamper with evidence; hamper the state's investigations or scamper away to avoid standing trial you will not be granted bail. Guilt or innocence does not feature in bail applications. Everyone is entitled in criminal cases to be presumed innocent until proven guilty.
2. Your trial date will be set down and agreed.
3. On the first day of the trial the Prosecutor, who is the person representing the state in your case, will inform the court what the charge is and will effectively work 'against' you as it is the state's aim to prove your guilt by leading evidence of all of the elements of the crime in question.
4. If you have a lawyer, this professional will represent you and defend you during the trial. It will be your lawyer's work to try to protect you and in so doing will 'plead' on your behalf and test the strength of the state's case by cross-examining those who give evidence for the state.
5. The pleading refers to when you have to say whether you are guilty or not guilty.
6. A broad-brushed outline of the basic court proceedings, sentencing process and adherence to the law post-sentencing that one could expect in a criminal matter is as follows:
- a. Please note this is a simplistic illustration only and does not take into account a

number of unique factors that can come into play in a real life situation.

- b. If you plead 'guilty' then the Magistrate will most likely accept this plea and find you guilty as charged provided he is satisfied that all elements of the charge have been properly admitted.
- c. If you plead 'not guilty' then the trial will proceed. The process of a trial will include the presentation and examination of evidence by both 'sides', as well as the examination and cross-examination of witnesses who may be experts in certain fields – i.e. your side and that of the Prosecutor who represents the state.
- d. After all the evidence is discussed and all the witnesses are heard, the Prosecutor has the chance to sum up the state's position and your lawyer will sum up your defense.
- e. The Magistrate will then retire in order to give proper thought to all the evidence provided and write a judgment.
- f. The Magistrate will only find you guilty if it is proven **'beyond reasonable doubt'** that you committed the crime.
- g. If there is the slightest reasonable doubt you will be released, which is referred to as being acquitted.
- h. The law determines certain minimum and maximum sentences for various crimes, taking different factors into account.
- i. A Judge (or in this case the Magistrate) always has the discretion to combine various types of sentences – for example: a prison sentence combined with community service, or going to prison and paying a fine. Compensation to your victims is also possible as punishment.
- j. If you are found guilty in a matter such as the fictitious case above, you will have a criminal record and if you should be charged with another crime in the future, this previous record will be taken into account when the future Judge determines your

sentence.

- k. Some prison sentences allow for release on parole after a certain period of time, which means that you will be released on specified conditions from the confines of the prison. You will then be under supervision of the correctional services while on parole and may not commit another crime, as this will put you back into prison, rather quickly.
 - l. Once you have served your sentence you will be able to resume normal daily life once again.
7. It is necessary to note that in a number of cases, once you are sentenced you may be granted the right to appeal if you think the judgment was incorrect and/or the evidence was obtained in an illegal way. An appeal process would then commence to revisit the above and it is possible that the first sentence passed can be overturned, on appeal.

Access to justice in civil cases

Fictitious case study 2:

It is Friday night and you go to play cards at your friend's house. This is a weekly gathering of a regular group of friends. At around midnight you decide to go home, which is just around the corner although you have to cross two roads to get there. Crossing one of the two roads usually requires waiting for the 'green man' before it is safe for pedestrians to cross but the robot is out of order. The road seems free of cars and you make it halfway across the intersection when you hear a car coming, but you cannot see it. You start to run but not fast enough and a car with no lights hits you, knocks you flying and you lose consciousness.

When you regain consciousness there is no car, your leg hurts and you cannot get up. A few people who heard the commotion have appeared from a near-by block of flats and call an ambulance. The ambulance takes you to the hospital, where you are treated after an x-ray highlights a fracture to your leg. Your head also hurts and you have various cuts and scratches around the front of your head

which causes the doctor to ask for a CAT scan to investigate whether there has been a head injury.



At the hospital they want to have your personal data, which you give, noting that you do not have medical aid. The doctor tells you that the hospital will treat you and informs you that there is a place where you can get reimbursed for your medical fees, called the Road Accident Fund.

You find out more about the Road Accident Fund over the next few days and consult with attorneys who do

this work on a 'contingency' basis, which means that they only take a fee if you are successful in receiving compensation from the Fund.

Hit and run, which this type of accident is called, is a punishable offence and you would have been able to make a report against the driver of the car had you known who it was, but now you can only file charges against an unknown person and claim from the Fund.

The civil process involves the following actions:

1. Following your initial consultation with a firm of attorneys specialised in this work you will be asked to provide various documents and evidence relating to the accident; your injuries; treatment; rehabilitation; loss of income and any permanent or temporary injury that the accident would have caused you.
2. In the meantime the police will commence a search for the driver, using valuable information that the people who helped you were able to provide.
3. The police report will then include this information in their report if they find the driver, which will be part of the documentation pack in the evidence supplied to and eventually led against the Road Accident Fund.

4. Your attorneys will start the legal process and the Fund will register your claim.
5. A process of determination of the kind of losses and damages you have suffered will commence on both sides and both your attorneys and the Road Accident Fund will appoint experts to assess the facts of your case.
6. These experts can include medical; psychological; occupational; paramedical; counseling and other forensic professionals.
7. At some point in time your case will have a trial date set and once the case commences the evidence of both parties will be presented in court – i.e. your evidence and that of the Road Accident Fund will be led and argued by your Counsel, who is usually an Advocate of the High Court, after which it will be assessed by a High Court Judge in order to pass judgment.
8. The judgment will indicate how much the Road Accident Fund is to pay you for past, current and future medical expenses, as well as the shortfall in loss of earnings due to the time taken off work and/or the impact your injuries have on your ability to work in the future. The court will also assess your general damages for pain and suffering.
9. It is possible to ‘settle’ the case between you and the Road Accident Fund prior to the trial date, which means that the parties can come to an agreement as to the figure to be paid out by the fund. This is common practice and is generally time saving and cost effective as trials can become very expensive to run.

Access to justice: equality court cases

For many generations South Africans lived in a society divided by the apartheid government whose laws and policies were often based on racial discrimination against black South Africans. This was until much of the apartheid legal system was mostly repealed in 1991 and the country's current Constitution was adopted in 1996 which guarantees racial equality under the law.

Under the Promotion of Equality and Prevention of Unfair Discrimination Act (the Equality Act), the

Equality Courts were created to hear cases based on unfair discrimination, hate speech and harassment. Any person or association, acting on his, her or its behalf or on behalf of another, may bring a case covered by the Act to the Equality Court if they have been discriminated against on the grounds listed including: race, gender, sex, age, colour, disability, religion and language amongst others.

Fictitious case study 3:

It is Friday and Mr Viwe Sibhara and his wife, who are staying in Cape Town for a conference, are looking for a hotel to stay at for the weekend. They approached XYZ Bed and Breakfast, a lovely seaside cottage that the couple are extremely excited about, hoping the beautiful scenery will provide a little distraction while away from the conference. However, their excitement is cut short when Mr Smith, the cottage's white owner, tells them they cannot stay. As they are leaving they see that Mr van Zyl and his wife, a white couple, are allowed to stay. Mr Sibhara challenges Mr Smith who responds: "Your kind is not welcome here." Mr Sibhara leaves, believing that the only reason that he was not permitted to stay at the cottage was because he and his wife are black.

An Equality Court hearing involves the following process:

1. You approach the nearest Magistrates' or High Court and ask for the Equality Court. You will be directed to a clerk of the Equality Court who will help you complete the relevant form.
2. The Equality Court clerk will then notify the other party, or respondent, who is alleged to have committed the discriminatory act. The respondent is given the form and will then have a chance to reply to the allegation, to deny it, or provide his/her side of the story. The respondent must then return the form to the court.
3. The clerk then passes the details of the complaint to the presiding officer who must decide whether a case should be heard by the Equality Court. The presiding officer will also decide whether the complaint should be handled by another forum such as the Labour Court.
4. If the presiding officer agrees that this is a case for the Equality Court, then the clerk must

set the court date, or directions hearing, where the presiding officer sorts out the issues such as when the parties must come to trial.

5. The clerk must then serve notice of the hearing on the parties. If either of the parties cannot afford to pay for the notice served then, the State must pay for this.
6. The Parties must then appear in the Equality Court on the date set.
7. The Equality Court can make orders where unfair discrimination, hate speech or harassment is found to have occurred, which include: a settlement between the parties, payment of damages, an order stopping the discriminatory practice, an unconditional apology, an audit of the respondent's policies and/or a direction to the clerk to refer the matter to the Director of Public Prosecutions to possibly institute criminal proceedings.

A few comments about legal representation

Although one can represent oneself in court action, it is generally accepted that a man who acts for himself 'has a fool for a client'.

It is preferable to seek legal representation either privately or through the societies and organisations set up to provide this type of support to those who are unable to carry the financial costs related to litigation.

A common route is for people to seek legal aid. There are however certain criteria one has to meet in order to qualify for legal aid, which would need to be discussed directly with such an organisation. Legal insurance is also commercially available and some lawyers are prepared to work on a 'no win no fee' or contingency basis in certain kinds of work.

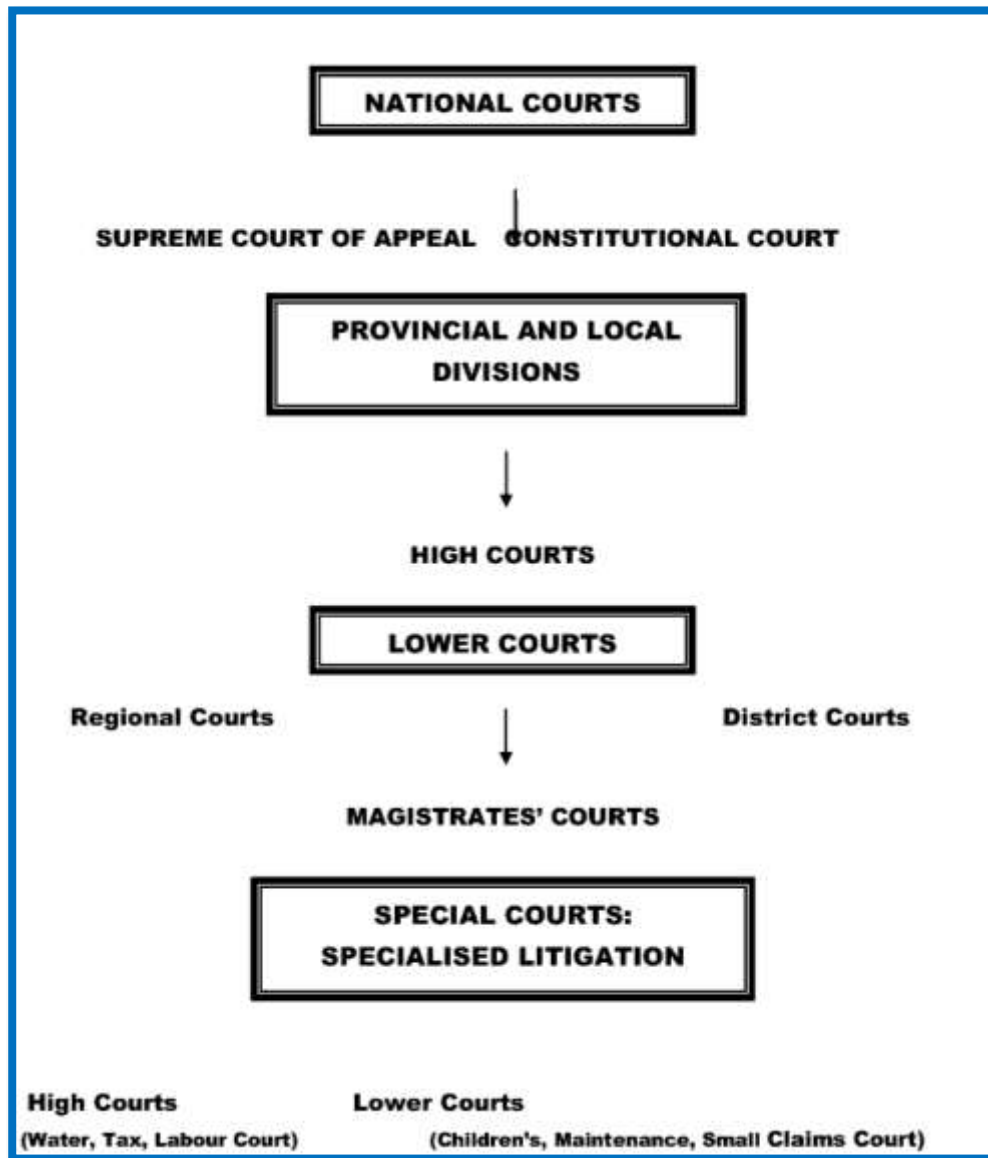
General challenges and points for consideration when accessing justice

The greatest barrier keeping people from claiming their right for access to justice in South Africa is the high cost involved. These costs come in various forms and could include the following:

- Consulting costs for legal advice and other professional experts.

- Service and delivery costs, for example: subpoena and summons costs.
- Time taken off work in order to consult with the above professionals.
- Time taken off work in order to attend court.
- Commuting costs back and forth to appointments and court hearings.
- The time taken for cases to get to trial and delays in trial process.
- Legal costs of the other party in the event of losing a civil case.

It is important that individuals who seek justice are aware of the judicial system in the country, as well as their rights, in order to claim them.



13 How to hold the Government accountable and to claim your rights

As discussed in previous sections, we live in a democracy in South Africa and everyone in a democratic society has the right to interact with and hold the government to account for its actions. We are no longer subjects of an authoritarian regime as we are **active citizens in a constitutional democracy under the rule of law**.

We have learned thus far that constitutionally speaking, government should be open and transparent in its actions so that citizens can understand what decisions were taken at any specific

time and also follow the reasoning behind such decisions. It is also of importance to understand in which way these decisions are intended to improve the overall situation for all.

Although the previous sections of this book have indicated what one's rights and responsibilities are, in practice many find it too daunting to take the government to task.

The good news in South African society is that practically there are various channels of communication set up in both government and non-government sectors **to assist people with their queries, concerns, complaints and grievances**. All it takes to make use of these channels is a bit of effort on the behalf of individual members of society, a personal interest in and respect for human rights and the desire to hold government responsible to the rule of law. Each individual action of this nature promotes the responsiveness of government to the needs of ordinary people and thus it is the responsibility of everyone in a democracy to ensure that a 'better life for all' is ultimately achieved by being **active citizens**.

In summarising the journey we have taken throughout the sections of this handbook, let's consider, practically, **how** when one knows one's rights, one is able to claim them.

1. The right to vote in elections:

One of the more high level opportunities for involvement is a person's right to vote in a national election, thereby 'voicing' support for a particular political party. As this opportunity only comes around every five years it does not necessarily provide an answer to your most immediate and/or direct queries and concerns, although it does ensure the existence of some degree of accountability.

2. Opposition parties:

The opposition has the right to question and challenge the government when consensus on important matters is required and together, through healthy argument, debate and discussion they can find better solutions for the whole of society. Supporting the political party whose policies you voted for provides an opportunity to be part of being a responsible citizen in doing your 'bit' for the protection of our democracy.

3. The media:

The media probably have the most important day-to-day task in a democracy. They provide the people with information, allowing citizens to become informed and knowledgeable, thus arming them with the necessary awareness and wisdom required when considering the respect for the delivery of their rights. The media have the task to be objective in coverage of the stories they carry and in spreading information in a manner that is understandable and accessible to all.

As the Bill of Rights guarantees the freedom of expression, the press and all other types of media can freely say and write what they think without having to fear punishment. The independence of the media is vital in a democracy.

4. Special interest groups:

Another important function in an accountable democracy is that of special interest groups. These are groups of people with the same interests on issues, who get together and ‘fight’ for certain rights. Since they present themselves as a group there is a greater chance of being heard than if each member of the group attempts to fight for their particular right single-handedly.

Interest groups usually consist of people that are directly affected by a specific issue, thereby giving them greater insight, knowledge and legal standing in raising their concerns, as well as suggesting solutions.

The TAC (Treatment Action Campaign) mentioned in an earlier section is a good example of a special interest group that fought for treatment for people with HIV/AIDS.

5. Chapter 9 institutions:

As has been discussed previously, our Constitution created institutions that support the democratic project in the country.

The office of the Public Protector and the Auditor-General are two of the most important institutions created under Chapter 9.

The Public Protector is a public officer who investigates the complaints of citizens who

are not happy with service delivery in government sectors.

Provided the complaint has merit, the filing of such complaint with this office sets wheels in motion for further investigation, focused on resolution. The Public Protector has access to all documents related to the circumstances of the complaint and is therefore geared to gain better insight into the case than any ordinary citizen could.

As the name of this office implies, this office protects the public from the huge and sometimes 'mysterious' machinery of government and bureaucracy, whilst addressing the citizen's complaint at the same time. When the conclusion is reached both public and government can rest assured that each party has been treated fairly.

The Public Protector usually deals with complaints on the provincial and national level, while complaints on a municipal level in the bigger cities are dealt with by the office of the City Ombudsman. The task of the Ombudsman is very similar if not identical to that of the Public Protector, the difference lying in the level of complaints with which they are dealing.

The Ombudsman deals with complaints concerning the city and the Public Protector steps in when larger geographic areas are concerned and when the whole nation is affected by the complaint of a citizen.

The Auditor-General performs the sole task of auditing the budgets of all levels of government. This ensures that financial resources are allocated in a fair manner and that the money is not used to bribe people or engage in other illegal activities.

6. The Judiciary:

Another important precondition in holding the government accountable is an independent judiciary.

As explained before the judiciary applies the laws made by the legislature and may not be interfered with by the executive or any political party as to do so could invite corruption, as well as various 'special favours' to those in power.

The judiciary remains strictly impartial in all matters referred to it.

7. The Pension Funds Adjudicator:

This adjudicator is another very specific institution which holds pension funds accountable. The Pension Funds Adjudicator only deals with complaints from the public in terms of the Pension Funds Act.

In order to be allowed to file a complaint to the adjudicator the citizen concerned must be a member or former member of the pension fund or a (former) beneficiary of the fund, who feels that some aspect of the fund management has not been properly managed.

8. The Independent Police Investigative Directorate:

This directorate (formerly called the Independent Complaints Directorate) deals with all kinds of complaints against the police of the country. Should a citizen have been assaulted by a police officer, have noted or become aware of bribery and/or has knowledge that corruption is taking place within the police service, the Directorate is where complaints can be lodged.

9. The National Consumer Forum:

Everybody has the right to food; drinking water; shelter; clothing; health care and education under the Bill of Rights. The National Consumer Forum encourages complaints from citizens who do not have access to such basic needs, as well as informs them as to where goods and services may be accessed.

10. The National Consumer Commission:

People who wish to lodge consumer complaints in an attempt to have them further investigated, as well as have action taken, would complain to this government commission. It has powers of authority that the above-mentioned forum does not and is headed up by a Commissioner.



11. The National Debt Mediation Association (NDMA):

This association deals with debt of every sort, assisting individuals to manage their debt in a manner that is in keeping with their financial circumstances and day-to-day living needs. An individual debt management program is designed for each member of society accessing the support of this association and includes the NDMA addressing organisations or banks that may have acted inappropriately with regard to the management of personal finances.

12. Childline South Africa:

This is an organisation that supports the children in South Africa via its hotline, providing input and assistance to children, teenagers and parents with everyday questions. Children and teenagers can call this hotline free of charge.

All matters affecting children and their best interests are constitutionally paramount.

In the words of Archbishop Emeritus Desmond Tutu: ***'It starts within us, with the recognition that we do not live in a vacuum. Each one of us is a constituent part of a greater organism: our community, our country, our continent, our world...'***

14 Case studies of interest

STATE v MAKWANYANE & ANOTHER 1995 (3) SA 391 (CC)

Right to life - death penalty abolished

In 1995 there was a challenge to the death penalty in the Constitutional Court. Mr. Themba Makwanyane was involved in an armed robbery in the late 1980s. He was sentenced to death. He did not want to die for the robbery he committed and thought that the death sentence violated his right to life, which is one of the rights found in the Constitution.

In the Bill of Rights two basic provisions were very important to him. One was the right to life and the other was the right to human dignity.

Mr. Makwanyane believed that the death penalty did not fit with these two provisions.

As these two rights are mentioned in the Constitution, the matter was heard at the Constitutional Court.

In its judgment the Constitutional Court decided that the fundamental provisions in the Constitution are of higher importance than the Criminal Procedure Act, which defined the cases for imposing the death penalty at that time.

The Constitutional Court abolished the death penalty in South Africa with this judgment and also strengthened the role of the Constitution as the highest form of law.

RAIL COMMUTERS ACTION GROUP AND OTHERS v TRANSNET LTD t/a METRORAIL AND OTHERS 2005 (2) SA 359 (CC)

Duty to ensure safety of rail commuters

Violent crime is a major problem in our country, also on trains.

The Rail Commuters Action Group consisted of people that represented the interests of all rail

commuters in the Western Cape. In addition to this the action group included eight members who had already become victims of violent attacks on trains. In their appeal they relied on the obligation of the commuter train company, Metrorail, to ensure the safety of their customers.

This appeal relies on the provisions of the Constitution which grants everyone the right to dignity, property, life, freedom from violence and personal security.

In its judgment the Constitutional Court found that these provisions apply.

The Constitution requires the state to provide security to its people. If the state cannot do that directly, the state organs have to fulfil this task. In this case it means Metrorail itself.

The Constitutional Court also took into account the fact that as Metrorail was the only provider and enjoyed a monopoly with regard to commuter train services, people had no other train service to make use of if they are not happy on board.

The court found that Metrorail has the obligation to ensure the security of its commuters and had to take reasonable and accountable steps to do so.

MINISTER OF HOME AFFAIRS AND ANOTHER v FOURIE AND OTHERS; LESBIAN AND GAY EQUALITY PROJECT v MINISTER OF HOME AFFAIRS AND OTHERS 2006 (1) SA 524 (CC)

Right to equality- right of same- sex couples to get married

The old South African Marriage Act defined marriage as a union between a man and a woman only, thus making it impossible for gays and lesbians to marry and receive the same legal status as heterosexual couples. This also meant that couples of the same sex could not receive the same benefits as heterosexual ones.

The Constitution provides that discrimination on the basis of sexual orientation is a violation of the law and also recognises everyone as being equal.

The Constitutional Court decided that the provision of the Marriage Act was invalid, as it violated the basic provisions in the Bill of Rights. The court gave Parliament 12 months to change this provision

which would give gay and lesbian couples the right to marry and receive the same benefits as those available to heterosexual married couples.

JOSEPH v CITY OF JOHANNESBURG 2010 (4) SA 55 (CC)

Procedural fairness - public law right to electricity

In order to receive electricity South Africans must pay their rates and taxes. In this case a group of residents living in an inner city building always ensured their rent was paid however their landlord kept most of the money to himself, falling into arrears with the city's electricity supplier. The result was that the building's electricity supply was cut off.

The group, relying on the Promotion of Access to Justice Act, successfully argued that their right to receive electricity municipal services, which local government is responsible for delivering, had been infringed in that it had been disconnected without them first having received notice.

The court found that South African citizens have a public law right to receive electricity based within the Constitution and that disconnecting the electricity supply without notice to the group of inner city residents was unfair to them. It ordered the city to reconnect the electricity supply until it met its responsibilities.

MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT v SOUTHERN AFRICAN LITIGATION CENTRE 2016 (3) SA 317 (SCA)

Government's international obligations

The government appealed the decision taken against it by the High Court where it was found that the failure of the government to take steps to arrest President al-Bashir of Sudan when he attended the General Assembly of the African Union violated South Africa's international duties.

The International Criminal Court issued two separate warrants of arrest for al-Bashir who was found to have committed war crimes, crimes against humanity and genocide in Sudan. South Africa is a

party to the Rome Statute and was required to arrest al-Bashir if he ever entered the country's borders.

The South African government not only failed to arrest al-Bashir but made sure that he was able to leave South Africa swiftly when there were suggestions that a local warrant may be issued for his arrest.

Both courts found that al-Bashir was not immune from arrest as the South African government had argued and that, although misinformed, government should have arrested the Sudanese statesman.

ECONOMIC FREEDOM FIGHTERS v SPEAKER OF THE NATIONAL ASSEMBLY; DEMOCRATIC ALLIANCE v SPEAKER OF THE NATIONAL ASSEMBLY 2016 (3) SA 580 (CC)

Powers of the Public Protector

In one of the Constitutional Court's more recent and important decisions, the Court was asked to decide what the nature of the Public Protector's powers are and whether President Jacob Zuma had to pay back a percentage of the money spent on his Nkandla Home.

In a unanimous judgment the court found that the power of the Public Protector to take appropriate remedial action has legal effect and is binding. The president or speaker of parliament could not call her report a mere recommendation.

The court also found that the conduct of the president as well as the speaker was inconsistent with the Constitution and that the president had to pay back the money for certain additions to his Nkandla home.

15 Conclusion

The Constitution and its Bill of Rights have a significant role to play in transforming South African society and the country's political and legal systems. However, the constitutional project can only be properly understood if we understand its history. We should not forget the strides we have made, with many of these important steps detailed in this very handbook.

As we have seen, there are important principles that underlie our constitutional order, they are: constitutionalism; the rule of law; democracy and accountability; separation of powers and checks and balances; co-operative government and the decentralisation of power. These principles are all expressly or implicitly contained in the constitutional text and shape our ordinary law, informing the way South Africans live.

The preamble of the Constitution provides that government must be 'based on the will of the people.' That means that the relationship between the government and its citizens is not merely one based on power. Rather, it means that the consent of the governed is the defining feature of this relationship. Where South Africans feel frustrated with the current elected body they can hold them accountable by voting for change.

The power to vote is the cornerstone of a democratic state and forms the foundation of holding those who abuse power accountable. What we have learned is that holding to account those who abuse public power is not a task that the Public Protector, the National Prosecuting Authority or similar institutions can carry alone. Accountability is the responsibility of all ordinary South Africans too, it's about making our own choices and taking action when it's necessary.

It is hoped that when reading this handbook it will inspire its readers to seek out accountability. It is also hoped that it provides some access and understanding of the tools required to do that. Most of all, it is hoped that in doing so we don't just look to empower ourselves, but that we also stand up for the vulnerable in our communities and shield those who need it most of all.

Provided each member of civil society is aware of his/her rights; lives responsibly and makes use of the access made available to them via the various institutions and pathways in place and seeks to ensure that the government is accountable to its citizens at all times, South Africa will not only retain

its reputation of having one of the most progressive Constitutions in the world, it will also be in a position to boast that it has a living document that is fully embraced by all.

In the words of Archbishop Emeritus Desmond Tutu: *'It starts within us, with the recognition that we do not live in a vacuum. Each one of us is a constituent part of a greater organism: our community, our country, our continent, our world...'*

Glossary

accountability:	responsible; required to account for one's conduct
association:	joining in companionship, function or for a common purpose
Bill of Rights:	a statement of the rights of a class of people – in South Africa this applies equally to all of its citizens
blueprint:	a detailed plan; the 'map' of how to complete a project
consensus:	general agreement of opinion
Constitution:	the body of fundamental principles and/or established precedents according to which it is acknowledged that a State or country is to be governed
corruption:	moral deterioration; use of corrupt practices such as fraud and bribery; 'rotten'
democracy:	a system of government by the whole population via elected representatives
discrimination:	unfavourable treatment based on some kind of prejudice such as race, gender, age etc.
encroach:	intrude or make in-roads
endemic:	found among a certain group of people or in a certain region
equality:	the state of being equal; all treated the same
Executive:	the branch of government that is in charge of the execution and enforcement of laws, policies and the administration of public affairs

fictitious:	imaginary or made up
impartial:	treating all parties equally and fairly
interim:	provisional; temporary; in the intervening time
Judiciary:	the branch of government in which its judicial powers are vested; includes the courts; its judges; magistrates and other personnel
juristic person:	this refers to a body of people, a corporation, partnership or legal entity of some kind that is recognised by law as the subject of rights and duties
legislation:	the process of making laws; laws themselves
Legislature:	this is the body of government that makes the statutory laws for the nation, its region and municipalities
liability:	the state of being legally bound; under obligation
parity of esteem:	equal level of importance
portfolio:	the office of a minister of State
representative:	typical of a class or category; consisting of elected individuals etc. based on the representation of a nation etc. by such individuals / persons
separation of powers:	the principle or system of vesting power in separate branches of government
sovereignty:	supreme rule
supremacy:	the highest authority
transformative:	creating change; undergoing change
transparency:	being easily understood; frankness; openness
violation:	treat with disrespect; disregard; failure to comply with

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