



THE SOUTH AFRICAN CONSTITUTION AND BILL OF RIGHTS

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Introduction

In 1994, after decades of living under an apartheid government, the first democratic election was held in South Africa. For the first time South Africa could call itself a democracy because everyone who was a citizen of South Africa could vote in the elections. The Constitutional Assembly was constituted with the task of drawing up a Constitution to represent the interests and needs of all the people of South Africa. Included in the Constitution was a Bill of Rights which gives people rights and responsibilities.

WHAT IS A CONSTITUTION?

A constitution of a country sets out:

- The social values that the country believes in
- The structures of government
- What powers and authority a government and government bodies have
- The rights of citizens
- The relationship between government and citizens
- Aspects of the relationships between citizens

A constitution is the highest law in the land and must be respected by all government bodies. It is higher than parliament and it can override any law that parliament makes if the law goes against the constitution. No law can go against the Constitution, whether it is a Customary law or a law that parliament makes.

The South African Constitution of 1996 is a document that consists of 14 chapters. It says how the government should rule the country and it includes a Bill of Rights.

WHAT IS A DEMOCRACY?

Democracy means that everyone has a say about how the country is run. In a democracy, the government is put into power by its citizens. The adult citizens of a democracy elect their government. One way they do this is by choosing people to represent them in a parliament. In a multi-party system, the party that gets the majority votes governs the country.

CHARACTERISTICS THAT IDENTIFY A DEMOCRACY

Citizens can participate in government

It is everyone's right and duty to participate in government.

All people are equal before the law

There is no legal discrimination based on race, religion, gender or other reason. Groups and individuals have a right to their own cultures, languages, beliefs and so on.

Political tolerance

Various opinions, beliefs, cultures, religions and so on need to be tolerated. So, while the majority of the people rule in a democracy, the rights of the minority must still be protected.

Accountability

Officials that are elected and appointed in government are accountable to the people for actions and decisions.

Transparency

In a democracy, people and the media (newspapers, tv, radio) can get information about what government decisions are being made, by whom and for what reason.

Regular, free and fair elections

Citizens choose their own representatives for government. They elect these officials in a free and fair way, without corruption and votes are secret. Elections are held regularly.

Economic freedom

People can own property and businesses and they can choose

their own work and join labour unions.

Controlling abuse of power

There must be ways to prevent government officials from abusing their power. The courts are independent from the government, and there are other bodies that have the power to act against corrupt government officials.

Human rights

Democracies aim to respect and protect the human rights of all and often use a Bill of Rights to do so. .

Multi-party system

A multi-party system means that more than one political party can participate in elections, so that people can choose who they want to represent them in government.

The rule of law

No one is above the law, including the president. This means that the law must treat everyone in an equal and fair way.

The separation of powers between different arms of government

The Legislature (parliament) made up of people's representatives, make the laws and policies. The Executive (cabinet) implement and oversee the public service. The Judiciary act as independent referees to interpret the law when there are disputes or conflicts or someone breaks the law.

(See page 62 Public participation)

Development of constitutions in South Africa

Between 1910 and 1994 there have been four Constitutions in South Africa:

- In 1910 Britain decided to withdraw from the government of South Africa and handed the country over to the white residents of the country who were the British settlers and Boers. The first Constitution for the Union of South Africa was adopted in 1910. This gave rights to the white minority but took away the right to vote of the majority of South Africans.
- In 1960 the white government held a referendum to decide whether South Africa would become a Republic. On 31 May 1961 South Africa was declared a Republic and the government adopted the second Constitution. This also took away the rights of black people.
- In 1983 the government passed the third Constitution. This Constitution created the tricameral parliament, which meant there was a separate parliament for the White, Coloured and Indian groups. This Constitution excluded black people and automatically made them citizens of the homeland where they were born. They had no rights outside these homelands.
- In 1994, twenty-six parties negotiated and adopted an interim Constitution that gave the vote to everyone. This Constitution lasted for two years. During that time the elected government worked as the Constitutional Assembly and had to draw up a final Constitution. This finally became law on 18 December 1996.

CODESA

On 2 February 1990, the National Party government unbanned political parties, released many political prisoners and detainees, and unbanned many people, including Nelson Mandela.

On 20 and 21 December 1990 the first session of CODESA (Convention for a Democratic South Africa) was held. There were 19 political groups at this event. All parties agreed to support the Declaration of Intent, which said that they would begin writing a new Constitution for South Africa.

THE MULTI-PARTY NEGOTIATING PROCESS

In March 1993 full negotiations were initiated under the name of the MPNP - Multi-party Negotiating Process - instead of CODESA. Twenty-six parties took part in the MPNP to write and adopt an interim Constitution to say how the government would govern after the elections on 27 April 1994. The MPNP drew up the Interim Constitution which was to last for two years.

THE CONSTITUTIONAL ASSEMBLY (CA)

After the elections in 1994 the new parliament - working as the Constitutional Assembly (CA) - wrote the final Constitution and on 8 May 1996, it was finally adopted by the Constitutional Assembly. The final Constitution was passed by parliament and became law on 18 December 1996.

The South African Constitution

The South African Constitution describes the social values of the country, and sets out the structures of government, what powers and authority a government has, and what rights citizens have. The Founding Provisions of the Constitution set out the principles and guarantees of democracy in South Africa.

(See page 9 Founding Provisions)

Because the Constitution is the highest law in the land, it stops each new government from passing its own laws that contradict the Constitution. It is

also much more difficult to change the Constitution than any other law, as it needs a two thirds majority vote in parliament. The Constitution therefore protects democracy in South Africa.

A government should never have unlimited power. Even governments which have been democratically elected can abuse the power that they have been given. There are cases of governments who were elected in democratic elections, and who then refused to allow further elections and became permanent rulers. Other governments abuse their power by persecuting people who are against them. The Constitution guards against governments in the future abusing the powers that they will have.

Our Constitution helps to guard against abuse of power by:

- Having rules about when elections should happen and what happens to parties that lose
- Making it very difficult to change the constitution
- Making sure that no person or government body has too much power
- The separation of powers (splitting power between different branches of government – parliament, cabinet and the judiciary)
- Setting out the human rights that people have in a bill of rights
- Creating independent courts and commissions that will protect people's rights, as well as monitor the government to make sure that it is doing its work properly
- Making it compulsory for all government bodies to be accountable and transparent to the public

THE RELATIONSHIP BETWEEN THE CONSTITUTION AND OTHER LAWS

The Constitution is a law passed by parliament and it is the highest law in the land. All other laws must follow it. Other laws are divided into statutes (laws or acts), common law and customary law:

Statutes are laws or acts which are made by government. Laws made by the national parliament are called *acts of parliament*, laws made by provincial legislatures are called *ordinances*, and laws made by municipal councils are called *by-laws*.

Common law means laws that have not been made by parliament or any other government. They are unwritten laws. Common law is based on Roman Dutch law (laws that were brought by the Dutch when they arrived in South Africa). The courts used these laws and developed them when they made decisions (or set precedents).

Customary laws are also unwritten laws. They are laws that apply to certain cultures or ethnic groups.

All these laws have to follow the Constitution. In other words, they cannot go against what the Constitution says. So, new laws must follow the Constitution and the government must change old laws or parts of old laws if they don't follow the Constitution. If a customary law or common law goes against the Constitution then a court will say it is invalid. In other words, it can't apply in the situation. *(See example below)*

EXAMPLE

Mary Sibiya's husband dies. There is a customary law that says women can't inherit land from their husbands who have died.

Mary is told by her husband's eldest son that he owns the land now that his father is dead. Mary wants to take her case to court because she thinks it is unfair. In this situation the court would look at the customary law and at what the Constitution says. If it thinks the customary law goes against Mary's right to equality and non-discrimination then it will say the customary law is invalid.

CHANGING OR AMENDING THE CONSTITUTION

The Constitution is much more difficult to change than other laws.

Section 74 of the Constitution says that if parliament wants to change the Constitution then:

- At least two-thirds (66%) of the members of parliament must vote to change it *and*
- at least 6 provinces in the National Council of Provinces must vote to change it

(See page 11 National Council of Provinces)

Section 1 of the Constitution says that South Africa is one sovereign, democratic state founded on values of human dignity, equality, human rights and freedoms. It also says that the Constitution is supreme and that there must be regular, free and fair elections where everyone can vote.

If parliament wants to change Section 1 or Section 74 then:

- At least 75% of the members of parliament must vote to change it, and
- at least 6 provinces in the National Council of Provinces must vote to change it

(Read Section 74 of the Constitution)

THE SEPARATION OF POWERS

The separation of powers in the Constitution means the government's functions and power are split into 3 branches. These branches each perform a separate function and are independent of each other. The purpose of this is so that they keep a check on each other. Separation of powers is an important part of democracy because it prevents any elected official or government body from abusing their powers. The 3 branches are:

- The *legislature* (parliament) which makes the laws
- The *executive* (cabinet) which enforces (carries out) the laws and
- The *judiciary* that interprets the laws

THE LEGISLATURE

The national legislature is called parliament. Parliament makes new laws and changes old laws for the whole country. It is made up of the National Assembly and the National Council of Provinces. Both of these bodies are responsible for making laws.

Each province also has a legislature called a provincial legislature which makes laws for each province.

The legislatures at national and provincial level are elected by citizens in national and provincial elections every five years.

THE EXECUTIVE

The national executive is made up of the president, the vice-president and the cabinet. The national executive is responsible for carrying out the laws, in other words, for putting the laws written by the legislature into action.

The cabinet is made up of ministers (such as the minister of health) who are appointed by the president. Each minister governs a department with public servants doing the administration.

The ministers cannot make their own laws although they can draft new laws or change old laws and ask parliament to pass these. Ministers must make sure that the policies of the government are implemented. Parliament can also ask ministers to explain why they are carrying out policy in a particular way. They report to parliament every year and their budgets are approved by parliament. In this way the executive is accountable to the legislature.

Each province also has its executive. The provincial executives are made up of a premier and members of an executive council appointed by the premier.

THE JUDICIARY

The judiciary is made up of courts, judges and magistrates. They make decisions in cases that are referred to the courts based on the laws made by the legislature and carried out by the executive. These decisions then help to define how laws should be applied. The courts also ensure that laws made by the legislature do not go against the Constitution. The Constitutional Court has the power to declare a law invalid if the judges find that it goes against the Constitution. In this way, the judiciary acts as a watchdog over the legislature and the executive – and holds them accountable to the Constitution and the laws they have passed.

People can take cases to court if they believe the actions of the executive go against the law or the Constitution. In this way, the courts act as a check on the work of the executive.

The judiciary must be independent of the executive and the legislature. In this way it can make decisions that are fair, even if this goes against what the legislature and executive want. Cases are often between different spheres of government, e.g. a municipality and a province. The judiciary interprets law only and must apply it neutrally. An independent body called the Judicial Services Commission appoints judges so these judges are independent of the government in power.

EXAMPLE

1. Parliament (the legislature) writes a new law that says all children at school must get a free meal. The minister of education (the executive) gives the education department instructions to carry out the new law. But when Thokozile goes to school she doesn't get a free lunch. The school refuses to give a free meal to any of the students. Thokozile's father and mother go to court to demand that the school give the students lunch. The court tells the school to do this because this is what the law says.

2. Parliament (the legislature) passes a law that says doctors who are Rastafarians cannot work in state hospitals. The Department of Health (the executive) gives instructions to all hospitals to dismiss all Rastafarian doctors. These doctors go to court and say that this law is invalid because it discriminates against people on grounds of their religion and it goes against their rights in the Constitution. The court agrees with the doctors and declares the law invalid.

THE SPHERES OF GOVERNMENT

The government in South Africa is divided into three spheres: national, provincial and local. The three spheres are autonomous, but in terms of Chapter 3 of the Constitution they have to work together and coordinate things such as budgets, policies and activities, particularly those that cut across all the spheres.

National parliament makes and carries out laws about issues which affect the whole country. These are issues like economic policy, defence and relationships with other countries. National parliament makes laws called Acts of Parliament which the whole country has to follow. (See page 10 Chapter 4: Parliament)

Provincial governments deal with things that affect their own provinces. Schedule 5 of the Constitution lists the issues that provincial government is responsible for. Each provincial legislature makes their own laws called ordinances and these apply to people living in the province. The provinces can draw up their own constitutions, but these constitutions cannot go against the national Constitution. (See page 13 Chapter 6: Provinces and page 13 Schedule 5)

There are some issues that both national and provincial government can make laws about. These are listed in Schedule 4 of the Constitution. However, national government is responsible for setting national standards on these issues, so laws written by provinces must follow national standard-setting legislation. (See page 12 Schedule 4)

Local government is the third sphere of government. Local governments deal with things that affect the local area that they control. Part B of Schedules 4

and 5 of the Constitution says what things local government is responsible for. This includes collecting rubbish, providing water, parking, electricity and parks. Laws written by local governments are called by-laws and they apply to the areas falling under the control of the local government.

Summary of the Constitution

PREAMBLE

We, the people of South Africa,
Recognise the injustices of our past;
Honour those who suffered for justice and freedom in our land;
Respect 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; and
- 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 Suid-Afrika. God bless South Africa.
Mudzimu fhatutshedza Afrika. Hosi katekisa Afrika.

CHAPTER 1: FOUNDING PROVISIONS

SECTION 1

The Republic of South Africa will be one, sovereign, democratic state founded on the following values:

- Human dignity, equality, advancement of human rights and freedoms
- Non-racialism and non-sexism
- The constitution will be supreme
- The rule of law will be supreme
- All adults will be able to vote
- There will be a common voter's roll
- There will be regular elections
- There will be a multi-party system of democratic government to make sure there is accountability and openness

SECTION 2

The Constitution is the highest law in the law in the country and everyone will be bound by the Constitution. Any laws that go against the Constitution will be changed or set aside.

SECTION 3

All South Africans are South African citizens. Every citizen is equal and has a right to the rights and privileges of being a citizen of South Africa. Everyone also

has duties, obligations and responsibilities of being a citizen of South Africa.
(See page 41, Chapter 2 Citizenship)

SECTION 4

The national flag will be black, gold, green, white, red and blue.

SECTION 5

The national anthem will be decided by the president.

SECTION 6

There are 11 official languages. These are: Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu.

A Pan-South African Language Board must promote the use of all official languages, the Khoi, Nama and San languages, and sign language. It must promote and respect other languages used in South Africa such as Arabic, German, Greek, Gujarati, Hebrew, Hindi, Portuguese, Sanskrit, Tamil, Telegu, Urdu and other languages used for religious purposes.

CHAPTER 2: THE BILL OF RIGHTS

Chapter 2 contains the human rights which will be protected in South Africa. A summary of the Bill of Rights (Sections 7 – 39 of Chapter 2 of the Constitution) and other topics linked to human rights are included in the section 'Human Rights' on pages 18-34.

CHAPTER 3: CO-OPERATIVE GOVERNMENT

Government works at national, provincial and local levels. (See page 8 *Spheres of government*). All spheres of government must:

- Keep the peace and national unity of south africa
- Look after the well-being of the people of south africa
- Be effective, transparent and accountable to the republic as a whole
- Be loyal to the constitution and to south africa
- Respect the status, institutions, powers and functions of government in other areas
- Not take on powers that the constitution doesn't give them
- Use their powers and perform their functions in a way that doesn't interfere with government in another area
- Co-operate with each other by assisting, supporting, consulting with each other on things of common interest

CHAPTER 4: PARLIAMENT

Parliament makes laws for the country. It is also called the national legislature. Laws made by parliament may not conflict with the Constitution. Parliament has 2 houses: the *National Assembly* and the *National Council of Provinces*.

THE NATIONAL ASSEMBLY

The national assembly consists of between 350 and 400 members of parliament. The people of South Africa vote in general elections for people to represent them in the national assembly. Only people who are 18 years or older can vote in an election. General elections are held every 5 years.

Members of the national assembly are elected according to the system of proportional representation. This means people vote for the party and not for a person. (See page 61 *Proportional representation*)

WHO CAN BE A MEMBER OF THE NATIONAL ASSEMBLY?

To be a member of the national assembly a person must be: a *South African citizen* who is registered to vote.

Permanent delegates to the National Council of Provinces or members of a provincial legislature or municipal council cannot be members of the National Assembly.

HOW DOES THE NATIONAL ASSEMBLY MAKE DECISIONS?

The national assembly makes decisions by voting. If the decision is about a new law (a bill), more than half of the members of the national assembly must be present before there can be a vote. If the decision is about anything else, at least one third of all the members must be present. The president is not allowed to vote in the national assembly.

THE NATIONAL COUNCIL OF PROVINCES (NCOP)

The NCOP represents provincial and local government interests in parliament and in the executive. It works with the national assembly to make and pass new laws and to change old laws. The NCOP has 90 members. Each province sends 10 delegates. The 10 delegates are made up of 4 special delegates, including the premier of the province, and 6 permanent delegates. The NCOP elects a chairperson and two deputies.

MAKING LAWS

The national assembly can pass laws on any matter, including matters in the functional areas listed in Schedule 4 of the Constitution. But it cannot pass laws on matters in the functional areas listed in Schedule 5 of the Constitution, unless it becomes necessary for reasons such as maintaining national security. A bill can be introduced to parliament by a cabinet member or deputy minister, a parliamentary committee, or a member of the national assembly. The national council of provinces (NCOP) can introduce a bill if it is about something that falls under the powers of the provinces.

(See next page Schedules 4 and 5)

(See page 77 Making new laws)

WHAT HAPPENS IF A BILL IS, OR MIGHT BE, UNCONSTITUTIONAL?

- Members of the national assembly can apply to the Constitutional Court for an order to declare that all or part of an act of parliament is unconstitutional. At least one third of the members of the national assembly must support this application. The application must be made within 30 days of the date on which the president signed the act.
- If the president thinks a bill goes against the Constitution, the president can refuse to sign it and send it back to parliament for them to look at again.
- If parliament makes the changes suggested by the president, the president must sign the bill.
- If parliament does not make these changes, the president can either sign the bill or send it to the Constitutional Court for the Court to say whether or not the law goes against the Constitution.
- If the Constitutional Court is satisfied with the bill, the president must sign it.
- If the Constitutional Court is not satisfied with the bill, it will be sent back to parliament. Parliament can either change the bill or let it fall away.
- If the Constitutional Court is satisfied with the bill, the president must sign it.
- If the Constitutional Court is not satisfied with the bill, it will be sent back to parliament. Parliament can either change the bill or let it fall away.

SCHEDULE 4: CONCURRENT FUNCTIONAL AREAS OF NATIONAL AND PROVINCIAL LEGISLATURES

PART A

- Administration of indigenous forests
- Agriculture
- Airports (not international or national)
- Animal control and diseases
- Casinos, racing, gambling and wagering, excluding lotteries and sports pools
- Consumer protection
- Cultural matters
- Disaster management
- Education at all levels, excluding tertiary education
- Environment
- Health services
- Housing
- Indigenous law and customary law
- Industrial promotion
- Language policy and the regulation of official languages
- Media services
- Nature conservation, excluding national parks
- Police
- Pollution control
- Population development
- Public transport
- Public works only in respect of the needs of provincial government
- Regional planning and development
- Road traffic regulation
- Soil conservation
- Tourism
- Trade
- Traditional leadership
- Urban and rural development
- Vehicle licensing
- Welfare services

PART B

*The following are local government functions.
The national government and the provincial governments have the legislative and executive authority to see that municipalities perform these functions.*

- Air pollution
- Building regulations
- Child care facilities
- Electricity
- Ferries, jetties, piers and harbours
- Firefighting services
- Local tourism
- Municipal airports
- Municipal planning
- Municipal public transport
- Municipal public works
- Stormwater management systems in built-up areas
- Trading regulations
- Water and sanitation services (domestic water use and sewage disposal systems)

FUNCTIONAL AREAS THAT BELONG ONLY TO THE PROVINCES

SCHEDULE 5: FUNCTIONAL AREAS OF PROVINCIAL LEGISLATURES

PART A

- Abattoirs
- Ambulance services
- Archives that belong to the provinces
- Libraries (but not national libraries)
- Liquor licences
- Museums (but not national museums)
- Provincial planning
- Provincial cultural matters
- Provincial recreation and amenities
- Provincial sport
- Provincial road and traffic
- Vets

SCHEDULE 5: FUNCTIONAL AREAS OF PROVINCIAL LEGISLATURES

PART B

*The following are local government functions.
The provincial governments have the legislative and executive authority
to see that municipalities perform these functions.*

- Beaches and amusement facilities
- Billboards and display of advertisements in public places
- Cemeteries, funeral parlours and crematoria
- Cleansing
- Control of public nuisances
- Control of businesses that sell liquor to the public
- Facilities to accommodate and bury animals
- Fences
- Licensing of dogs
- Licensing and control of businesses that sell food to the public
- Local amenities
- Local sport facilities
- Markets
- Municipal abattoirs
- Municipal parks and recreation
- Municipal roads
- Noise pollution
- Pounds
- Public places
- Refuse removal and refuse dumps
- Street trading
- Street lighting
- Traffic and parking

CHAPTER 5: THE PRESIDENT AND THE NATIONAL EXECUTIVE

The national executive is the body which puts the laws written by parliament into action. The executive cannot pass new laws. The national executive is called the cabinet and it consists of the president, the deputy president and cabinet ministers appointed by the president.

THE PRESIDENT

The president is the head of state, head of the cabinet and commander-in-chief of the defence force. He/she is elected by the national assembly from among its members.

THE CABINET

The cabinet consists of the president, the deputy president, and all the ministers, for example, the minister of education, the minister of health, and so on. Each minister has a government department and administration that he or she is in charge of.

The president selects and appoints the deputy president and the ministers in the cabinet. The president can also appoint deputy ministers to assist members of the cabinet. The president can dismiss any of these people he or she has appointed.

The deputy president and the ministers are all accountable to the president and to parliament. The executive has to follow the policies of the government. For example, the minister of education and his or her department must carry out all the laws that parliament makes about education and put into practice the policies of the government on education. The different departments can refer bills to parliament to have them made into laws.

CHAPTER 6: PROVINCES

There are 9 provinces: Eastern Cape, Free State, Gauteng, Kwazulu-Natal, Mpumalanga, Northern Cape, Limpopo, North West and Western Cape.

Each province has its own provincial government. This is made up of a provincial legislature and a provincial executive.

PROVINCIAL LEGISLATURES

The provincial legislatures write laws called ordinances for their provinces. Only people living in the province and people visiting it have to follow these laws. Members of provincial legislatures are elected during the national general elections which take place every 5 years. There will be between 30 and 80 members in each provincial legislature.

PROVINCIAL EXECUTIVES

The provincial executives are made up of the premier and the executive council of that province. The executive council consists of the premier and not more than 10 members appointed by the premier.

POWERS OF THE PROVINCES

Provincial governments have decision-making powers for their own provinces. They can make their own constitutions and their own laws, but these must follow the national Constitution. Provincial legislatures can pass laws on any matter in the functional areas listed in Schedules 4 and 5 of the Constitution. National and provincial government share powers to make laws about some issues, like health, welfare and education. National government is responsible for setting national standards on these issues, so laws written by provinces must follow national standard-setting legislation. *(See pages 12-13 Schedules 4 and 5)*

CHAPTER 7: LOCAL GOVERNMENT

Local governments make decisions and laws, called by-laws, for their own municipal areas. These may not go against the Constitution, nor acts of parliament or provincial ordinances. Municipal councils carry out the executive and legislative functions of local government.

WHO CAN VOTE IN LOCAL GOVERNMENT ELECTIONS?

Municipal councils are elected every 5 years in local elections. People who can vote must live in the area covered by the local government, and they must be registered as a voter in the area.

POWERS OF LOCAL GOVERNMENT

Local governments have the right to administer the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5, and any other matter referred to them by national or provincial laws.

(See pages 12-13 Schedules 4 and 5)

(See page 89 Local Government)

CHAPTER 8: COURTS AND ADMINISTRATION OF JUSTICE

The Constitution says the courts are independent. This means that the national executive and parliament cannot interfere in what the courts do. Everyone, including the government, must follow the decisions of the courts. The courts are:

- The Constitutional Court
- The supreme court of appeal
- The high courts
- Magistrate's courts
- Other courts set up by acts of parliament, for example, the labour court, land claims court, small claims court

THE CONSTITUTIONAL COURT

The Constitutional Court is made up of a chief justice, deputy chief justice and nine other judges. The judges can only be judges in this court for up to 12 years. The Constitutional Court is the highest court to hear cases about the Constitution and all other courts must follow its decisions. For example, the Constitutional Court says the death penalty is not allowed because it goes against people's right to life, so no other court in South Africa can sentence anyone to death.

WHAT CASES CAN GO TO THIS COURT?

There are certain cases that only the Constitutional Court can make decisions about. Some of these cases are:

- Disputes over constitutional matters between government bodies and between different levels of government, for example, between a national and a provincial body.
- Whether laws passed (or about to be passed) by parliament or provincial governments go against the Constitution.
- If any conduct of the president goes against the Constitution.

HEARING CASES ABOUT THE CONSTITUTION

Any court can hear a case about the Constitution, including cases about abuses of rights. Courts can do the following:

- Remove a law which is unconstitutional
- Stop any conduct which is unconstitutional
- Give the body which made the law time to change the law

The Supreme Court of Appeal and the High Courts can make an order about how unconstitutional a law is. But they can only provide 'temporary relief' until the case goes to the Constitutional Court. Only the Constitutional Court can confirm that it is unconstitutional and therefore invalid.

WHO CAN TAKE A CASE TO THE CONSTITUTIONAL COURT?

Anyone can take a case directly to the Constitutional Court but it is difficult for a person who is not a lawyer to do this because of the legal questions involved. It would therefore be better to use a lawyer to take a case to Court.

TAKING A CASE TO THE CONSTITUTIONAL COURT

Anyone who wants to bring a case to the Constitutional Court must usually start in a High Court. In certain cases the state will provide legal aid. A High Court will hear the case and it has the power to make a decision. If the person who has brought the case is unhappy with the decision, he or she can usually appeal against a decision of the High Court. The appeal will be heard in the Constitutional Court. The Constitutional Court has to decide on the meaning of the Constitution in relation to a dispute. It has to interpret the relevant section(s) in the Constitution and see how it applies to the case.

The Constitution says that at least 8 judges must hear any case that goes to the Constitutional Court. Decisions of the Court are reached by a majority vote of the judges hearing a case.

Sessions of the Constitutional Court are open to the public and press.

(See examples of Constitutional Court cases on the next page)

EXAMPLES

1. A provincial law (ordinance) says the province must only employ female teachers. All male teachers must be dismissed. A male teacher takes his case to the High Court. The High Court cannot remove this law. But the judges of the High Court can say that they think the law goes against the Constitution. They can decide that the teacher cannot be fired until the Constitutional Court has decided whether the law is constitutional or not.

The male teacher, or another male teacher, or the Provincial Department of Education, can ask the Constitutional Court to decide whether the law goes against the Constitution or not.

2. Mr Soobramoney was a diabetic who suffered from heart disease and kidney failure. He applied to a state hospital for special treatment involving the use of a very expensive machine. Because of the shortage of machines and staff, the hospital only admitted patients who could be cured, or those who needed a kidney transplant. Mr Soobramoney did not fit either of these two categories. He was told that he did not qualify for the treatment.

He applied to the Durban High Court claiming that he had a right to receive treatment from the hospital because:

- Section 27 of the Bill of Rights says no one can be refused emergency medical treatment
- Section 11 says he has a right to life

The High Court turned down his application. Mr Soobramoney appealed to the Constitutional Court. The Court said his case was not an emergency that would allow him to receive emergency medical treatment. It also said that even though Mr Soobramoney had the right to have access to health care, the state only had to provide what it could afford. In this case the state could not afford to give him the treatment. The Court turned down the appeal.

THE SUPREME COURT OF APPEAL

The Supreme Court of Appeal has a Chief Justice, a Deputy Chief Justice and other judges. This court is the highest court of appeal in all cases, except cases about the Constitution. It decides on appeals from lower courts and decisions of this court must be followed by all lower courts.

HIGH COURTS

Each province has a High Court which is headed by a judge president and a deputy-justice president. Some provinces may also have 'branches' called local divisions.

If a person is unhappy about a decision of a High Court he or she can appeal to:

- The Constitutional Court if it is a constitutional matter
- The Supreme Court of Appeal in any other matter

(See page 124 *Trials, appeals and reviews*)

MAGISTRATE'S COURTS

Each area in the country has its own magistrate's court. These courts deal with less serious criminal and civil courts. If a person is unhappy with the decision of a magistrate he or she can appeal to a High Court of that province.

HOW JUDGES ARE CHOSEN

The Judicial Services Commission interviews judges and recommends a shortlist of four for each vacant position to the president, who makes the final decision.

(See page 116 *Structure of the Courts*)

CHAPTER 9: STATE INSTITUTIONS THAT SUPPORT CONSTITUTIONAL DEMOCRACY

The Constitution says there will be seven government institutions to protect people from abuse by the government. They are referred to as the chapter 9 Institutions or protection mechanisms.

It is their job to make sure that the government does its work properly.

(See page 34 Protecting human rights)

These institutions are independent and report to parliament at least once a year.

They are:

- The Public Protector
- South African Human Rights Commission
- Commission on Gender Equality
- The Auditor General
- Independent Electoral Commission
- Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities
- Independent Communications Authority of South Africa

CHAPTER 10: PUBLIC ADMINISTRATION

Public administration refers to people who work for the government, also called the public service. This includes anyone who gets a salary from the government such as the police, army and people working in government departments like the education department.

The public service must put the policies of the government into practice.

The **Public Service Commission** is an independent body whose job it is to monitor, evaluate and oversee the administration of the public service. It is made up of one representative from each province and it must account to parliament. For example, it investigates grievances of employees in the public service, it ensures that public officials follow correct procedures, and so on.

CHAPTER 11: SECURITY SERVICES

The security services consist of a single defence force, a police service and an intelligence service. National security is controlled by parliament and the national executive. The security services are there to protect the people and the country and they are not allowed to act for or against a political party.

(See page 141 Reporting a case of police misconduct)

CHAPTER 12: TRADITIONAL AUTHORITIES

The Constitution recognises traditional leaders and indigenous or customary law. It says the courts can apply customary law if it is appropriate in a case. But, customary laws cannot go against the Constitution. So, if a customary law goes against the Bill of Rights it will be regarded as invalid.

The Constitution establishes a national council of traditional leaders and provincial councils of traditional leaders. These councils allow traditional leaders to play an advisory role on matters relating to traditional leaders and customary law in national and provincial governments. *(See page 83 Traditional leadership)*

CHAPTER 13: FINANCE

The National Revenue Fund – The Constitution sets up a national revenue fund. All money raised by the national government must go into this fund, for example taxes, fines and donations. Parliament and provincial governments get their money from this Fund.

The Financial and Fiscal Commission – This commission is an independent body whose job it is to advise and make recommendations to any level of government about how to spend their money. It can also give advice about how much money should go to provincial and local governments.

How taxes are budgeted – The government gets taxes and levies from people who work (income tax), from companies and from VAT (the tax that people pay on goods that they buy). This money goes into the national revenue fund. The minister of finance and the finance department prepare the national budget for the country which says how the money in the national revenue fund will be allocated.

CHAPTER 14: GENERAL PROVISIONS

International agreements only become law in South Africa once they are made law by an Act of Parliament and they are published in the government gazette.

Human Rights

The first part of this section gives an explanation of human rights and related issues. The second part *on pages 21–33* provides a summary of the South African Bill of Rights which is Chapter 2 of the Constitution.

WHAT ARE HUMAN RIGHTS?

Human rights are also called natural rights. They belong to people because they are human beings. People are entitled to them regardless of where they live, their class, race, sex, age, and so on. There are many international documents that deal with human rights, for example, the Universal Declaration of Human Rights, which have been signed by many countries with different social, political and economic systems.

Most people would support human rights that are based on basic values, such as respect for human life and human dignity. But not all people agree on the interpretation of such rights and how they should be put into practice. There is also debate about which human rights are most important and which are less important. The Bill of Rights in the South African Constitution contains the human rights that will be protected in South Africa.

LEGAL RIGHTS AND MORAL RIGHTS

Legal rights are rights laid down in laws which are made by parliament and they may give people certain rights. For example, it was once a legal right to own slaves because there were laws that allowed this, even though it went against the human rights of the people who were slaves.

There are also moral rights. For example, people over a certain age may have a legal right to drink alcohol, but others may believe that they do not have a moral right to do so. Different people have different ideas of what is moral and what isn't moral. Some communities may practice moral codes that go beyond what the law says.

INDIVISIBILITY OF HUMAN RIGHTS

Rights are often divided into different categories such as first, second and third generation rights, or civil and political rights, socio-economic rights and collective and cultural rights. But while it may be convenient to put these rights in categories, in reality they all overlap with each other and are completely interdependent. So, even if a single right seems more important than another, they still depend on each other to be effective. For example, for people to be able to use their right to vote effectively, they must have other rights like the right to attend political meetings, to have freedom of speech and to be free to move anywhere. Political rights are also strongly linked to socio-economic rights: if people don't have food to eat, a roof over their heads or running water then they might see little value in their right to vote or to join a political party.

The three generations of rights are traditionally described as follows:

First generation: civil and political rights and freedoms that everyone is entitled to (examples include the right to life, to vote, freedom of speech, to assemble and demonstrate).

Second generation: social and economic rights that everyone should have, but these rights may only be realised when resources permit (examples include the right to basic services, access to housing, land, health care, education and the right to earn a living).

Third generation: collective rights and cultural rights. These are also called community rights (examples include environmental rights, the right of all people to self-determination and the right to development).

RIGHTS AND RESPONSIBILITIES

For every right that a person has there is usually a responsibility that is connected to that right. For example, you have a right to freedom of expression, but a responsibility not to tell deliberate lies about someone else. There is a general responsibility to respect and be tolerant of other peoples' rights, for example you enjoy the right to religious freedom and all beliefs are respected. You also have the responsibility to respect others' beliefs, rights and choices. So even if your faith condemns homosexuality, you are not allowed to discriminate against gay people.

The government also has responsibilities in terms of rights. These are examples of some rights and responsibilities:

EXAMPLE

SOME RIGHTS & RESPONSIBILITIES

Right to freedom and security of the person. You have a responsibility *not to abuse your partner or children in the privacy of your home*. The government has a duty *to ban the use of torture to get information from people*.

No slavery or forced labour. You have a responsibility *not to allow your children to go to work when they are very young*. The government has a responsibility *to pass and monitor a law that sets a minimum age for people who are working*. *The government has to act against human trafficking*.

Freedom of movement and residence. People are free to move between provinces and cities. You have a responsibility *to accept anyone who comes and lives next door to you as your neighbour*. The government has a responsibility *to issue passports and identity documents to all citizens who apply*.

Right to education. All children have a right to education. You have a responsibility *to send all your children to school*. The government has a responsibility *to build enough schools and provide enough teachers so that everyone can go to school and get a proper education*.

CONFLICTS IN RIGHTS

There are times when one person's right will conflict with the rights of another person. The South African Bill of Rights says it is acceptable in certain situations to limit rights, if it is reasonable to limit them in the situation, and it is justifiable in an open and democratic society that is based on equality and freedom. Where there is a conflict of rights and each person thinks their right is more important than the other person's right, the courts may be approached to decide whose right is more important in a particular situation. *(See page 33 Limitations on rights)*

EXAMPLES

1. A school which follows Hindu traditions and customs refuses to take a child into the school because the child is not a Hindu.

The school says they have a right to practice their own religion, culture and belief. The parents of the child argue that it is their right to send their child to any school of their choice. They say their child has a right to education.

The conflict is about the right to education versus the right to practice your own religion, culture and beliefs.

2. In a rural community some people make a living by chopping down trees for firewood that they sell to the public. The government has appointed an official to protect the environment and to stop people from chopping the trees down.

The conflict is about the right to choose how to earn a living, versus the right to an environment that is protected so that people can always live there.

3. Jon believes he is exercising his right to freedom of expression when he carries a poster around that says 'Jews go back to Israel'. But Jewish people have the right to protection against discrimination and to practice their own religion. Jon's right could probably be limited because this is a form of hate speech and he is creating dislike or hatred for Jewish people by his actions.

INTERNATIONAL DOCUMENTS ON HUMAN RIGHTS

Human rights are set out in many international documents. When a country ratifies a document, it agrees to be bound by the rules in the document and make the document a part of its own laws.

If a country has signed but not ratified a document it means it supports the rules in the document and promises not to commit acts which would defeat the purpose of that document. It can mean the country plans to go through a process in order to ratify the document later.

South Africa has signed some international documents and ratified others. These are some of the most important international human rights documents:

INTERNATIONAL HUMAN RIGHTS DOCUMENTS

- 1948 Universal Declaration of Human Rights (not legally binding on governments but it has moral and political authority in international communities). South Africa has not signed nor ratified it.
- 1953 Convention on the Political Rights of Women. South Africa has signed and ratified it.
- 1957 Convention on the Nationality of Married Women. South Africa has signed and ratified it.
- 1966 International Covenant on Economic Social and Cultural Rights. South Africa has signed and ratified it.
- 1966 International Covenant on Civil and Political Rights. South Africa has signed and ratified it.
- 1966 International Convention on the Elimination of All Forms of Racial Discrimination. South Africa has signed and ratified it.
- 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). South Africa has signed and ratified it.
- 1981 African Charter on Human and People's Rights. South Africa has signed and ratified it.
- 1984 Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. South African has signed and ratified it.
- 1989 Convention on the Rights of the Child. South Africa has signed and ratified it.
- 1996 International Labour Organisation Conventions: Convention Concerning Forced or Compulsory Labour, Convention Concerning the Abolition of Forced Labour, Convention Concerning Discrimination in Respect of Employment Occupation. South Africa has signed and ratified these.
- Rome Statute on the international Criminal Court has been signed and ratified.

CREATING A HUMAN RIGHTS CULTURE IN SOUTH AFRICA

A human rights culture means people in a society understand what their rights are and understand that they have a duty to respect and tolerate other people using their rights. The Bill of Rights in the Constitution guarantees our rights and says we can defend them in court. This will go a long way towards creating a human rights culture. But building a human rights culture depends mostly on the attitudes of individuals, and the respect and tolerance that is shown amongst people.

People are tolerant when they learn to accept and live with the differences in other people, whether it is their attitudes, actions, cultures, religions, sexual orientation , lesbian, bisexual, etc). For example, a tolerant person will accept that other people have different opinions to their own. They will respect them by allowing them to express these without shouting at them or assaulting them.

Summary of the South African Bill of Rights

Chapter 2 (sections 7 – 36) of the Constitution contains the human rights that will be protected in South Africa. The following section describes each of these rights and relevant laws that have been passed to give effect to individual rights.

SECTION 7: INTRODUCTION

A Bill of Rights is included in the Constitution to make them law so that people can use them in court to protect themselves.

The Bill of Rights can only be changed by an act passed by:

- The national assembly, if at least two-thirds (66%) of the members of parliament vote for it *and*
- The national council of provinces, if at least 6 provinces vote for it.

(See page 7 Changing or amending the Constitution)

Section 7 also says the government must respect, protect, promote and fulfill the rights in the Bill of Rights.

SECTION 8: APPLICATION OF THE BILL OF RIGHTS

The Bill of Rights applies to all laws. It must be followed by all branches of government and all government bodies. This means it must be followed by:

- The legislatures (bodies that make laws)
- The executive (bodies that carry out the laws)
- The judiciary (the courts)

(See page 7 The separation of powers)

VERTICAL AND HORIZONTAL APPLICATION OF THE BILL OF RIGHTS

The Bill of Rights applies to all matters between citizens and the government. This means it applies in a vertical way between government and citizens. It protects citizens from things done to them by the government.

The Bill of Rights also works in a horizontal way. This means it applies to matters between ordinary people. It protects people from things done to them by other people.

See examples on the next page.

EXAMPLES

1. A restaurant owner says men must wear a jacket and tie in his restaurant. He puts Peter out of his restaurant when he takes off his jacket and tie. Peter complains that he has a right to dress however he likes. The restaurant owner says it is his property and he has a right to put people out if he doesn't like what they are doing.

2. The same restaurant owner also refuses to allow women to come into his restaurant. He says his restaurant is only for males. Shanaaz comes into the restaurant for a meal. He tells her to leave. She complains and says he is discriminating against her because she is a woman. The restaurant owner says it is his right to do what he likes with his property.

In both these examples each person has rights. The question is, whose rights are more important in the circumstances and whose rights should be protected? The Bill of Rights protects people from having their rights abused by another person (in other words, it works in a horizontal way) but sometimes it is difficult to know whose rights are more important in each case. Ultimately, it will be up to the courts to decide whose rights should be protected.

SECTION 9: RIGHT TO EQUALITY

- (1) *Everyone is equal before the law and has the right to equal protection and benefit of the law* – Laws may not unfairly discriminate against anyone and everyone is entitled to equal rights and freedoms.
- (2) *Equality includes the full and equal enjoyment of all rights and freedoms.* The government must take active steps to change the inequalities of the past by passing laws that promote the achievement of equality. This is called *affirmative action*.

Affirmative action means taking positive action to protect or help a person or group who has been prejudiced or disadvantaged in the past, to help undo the imbalances and disadvantages that were caused by discrimination and oppression in the past. The *Employment Equity Act* puts the right to equality into practice in the workplace. People from designated groups (black people – including African, Coloured and Indian – women and people with disabilities) must be given equal employment opportunities and they must be equitably represented in all work categories and levels. (See page 213 *Employment Equity Act*)

The *Affirmative Action in the Public Service Act* covers employment in the public sector (the government service). Under the Act all government departments must have affirmative action programmes.

- (3) Neither the state nor any person can unfairly discriminate against someone, either directly or indirectly. It is against the law to discriminate against anyone on any of the following grounds:
 - Race and colour
 - Sexual orientation: being gay, lesbian or heterosexual
 - Marital status: being single, married or divorced
 - Gender: social and cultural male or female roles (for example, where a woman can't get a certain job just because she is a woman) sex: physical differences between men and women (for example, a woman is discriminated against because she is pregnant)
 - Pregnancy
 - Age
 - Disability
 - Ethnic origin: being from a particular background, such as a clan or language group
 - Culture: having a shared culture and traditional practices
 - Language

- Religion, conscience, belief
- Birth

It is not always the case that an action which treats people differently is an infringement of the right to equality. The Constitutional Court has decided that there are a series of questions that need to be asked before it can be found that a particular action amounts to discrimination. These questions are:

- Does the action differentiate between people or categories of people?
- If the action does differentiate, is there a rational connection between the action and a legitimate government purpose? In other words, does the government have a good reason for the action?
- Does the differentiation amount to unfair discrimination?

The Promotion of Equality and Prevention of Unfair Discrimination Act (2000) creates a general prohibition against unfair discrimination and says what discrimination is against the law in different sectors of society including: in employment, education, health care, land, housing and accommodation, insurance, pensions, services, associations and partnerships, clubs, professions and the media. The Act also says how people who have been discriminated against can be compensated for this.

If someone is charged with unfair discrimination it is up to the person who is doing the discriminating (not the person discriminated against) to prove that the discrimination was reasonable and justifiable. The courts will decide if an action was unfair by looking at how the action affected the person bringing the claim.

Equality Courts can hear cases of discrimination and have powers to conciliate and mediate, grant interdicts, order payment of damages or order a person to make an apology. (See www.doj.gov.za and click on *Equality legislation* for contact details of *Equality Court Managers in the different provinces*)

CASE STUDY

A case of unfair discrimination was brought against the president when he said that certain women and children should be released from prison as part of an amnesty programme. Hugo, the person bringing the claim of unfair discrimination, said it was unfair that men weren't given the same treatment as women.

The argument brought by the president against Hugo was that the women prisoners were needed to look after the children and that is why it was fair that they should be released rather than the men. The court said the action taken by the president was not unfair.

SECTION 10: RIGHT TO HUMAN DIGNITY

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

SECTION 11: RIGHT TO LIFE

Everyone has the right to life.

The *Criminal Procedure Act* includes the right for police (or someone legally entitled to make an arrest) to 'shoot to kill' in certain situations or use 'deadly force' in certain circumstances to carry out an arrest. The Constitutional Court recently looked at the use of force to make an arrest and at how this impacted on a person's rights. In the case of *S v Walters*, the Court had to look at balancing peoples' right to life, dignity and bodily integrity and the interests of a just criminal system. The Court said the provisions relating to the use of 'deadly force' for arrests were too wide and were therefore unconstitutional. For example, using 'deadly force' in the case of a person caught shoplifting would not be justifiable.

(See page 139 Using force to make an arrest)

THE DEATH PENALTY

The debate about the death penalty is based on the right to life, and the right not to be treated or punished in a cruel, inhuman or degrading way (section 12). Those who are against the death penalty argue that the state cannot execute (kill) criminals even if they have taken someone else's life. Others say that the death penalty should be allowed because someone who has taken another human being's life has given up the right to their own life. The Constitutional Court has said that the death penalty goes against a person's right to life. So, a court cannot pass the death sentence against anyone.

TERMINATION OF PREGNANCY (ABORTION)

The debate about abortion is based on the right to life, and the right for women to make decisions about reproduction (having children) and to have control over their own bodies (Section 12). People who argue against abortion say the unborn baby has the right to life from the moment the egg is fertilised. People who argue for abortion say that women have the right to make decisions about their own bodies, and that the decision as to when life begins (in the womb or at birth) is for each individual to make. Parliament has passed a law called *The Choice on Termination of Pregnancy Act* which allows women the choice to terminate a pregnancy up to a certain stage. Obviously anyone who is opposed to abortion can not be forced to have one.

SECTION 12: FREEDOM AND SECURITY OF THE PERSON

This includes the following rights:

- Not to be put in prison without good reason
- Not to be detained without trial
- To be free from all kinds of violence in both public and private
- Not to be treated or punished in a cruel, inhuman or degrading way; torture is not allowed.
- To make decisions about reproduction (having children)
- To have control over our own bodies
- Not to be forced to have medical or scientific experiments done on people

VIOLENCE AND ABUSE IN THE HOME

Everyone has the right to be free from all forms of violence in the home. This right ensures that the government and the police must take measures to prevent domestic violence, for example, abuse of women and children in the home.

CORPORAL PUNISHMENT

The Constitutional Court has said that punishing people and children by whipping them or giving them a caning goes against this right. The *Abolition of Corporal Punishment Act (1998)* says beating a child as a form of punishment is illegal because it goes against a child's right to dignity and his/her right not to be treated in a degrading way.

SECTION 13: SLAVERY, SERVITUDE AND FORCED LABOUR

No form of slavery or forced labour is allowed.

SECTION 14: RIGHT TO PRIVACY

Everyone has the right to privacy, including the right not to:

- Be body-searched without a court order

- Have your home searched without a court order
- Have your things taken from you
- Have your letters opened or your telephone tapped

The Interception and Monitoring Prohibition Amendment Act (1996) prevents peoples' conversations being intercepted.

SECTION 15: FREEDOM OF RELIGION, BELIEF AND OPINION

Everyone has the right to believe or think what they want, even if their opinion is different to the government. Everyone has the right to practice the religion they choose and in the way that they choose provided that their actions do not go against the Constitution. For example, a woman who marries according to customary law does not lose her rights of equality when she gets married. Government institutions, like schools, can follow religious practices (like having prayers in the morning) but this must be done fairly and people cannot be forced to attend them.

SECTION 16: FREEDOM OF SPEECH AND EXPRESSION

Everyone has the right to say what they want, including the press and other media. However, there are certain kinds of speech that are not protected which means that this right is limited in certain ways. The kinds of speech that are not protected are:

- Propaganda for war
- Inciting (encouraging) people to use violence
- Hate speech which means spreading hatred and encouraging people to act violently or harmfully towards other people.

SECTION 17: FREEDOM OF ASSEMBLY, DEMONSTRATION, PICKET AND PETITION

Everyone has the right to assemble with other people, hold a demonstration, picket or present petitions. They must do this in a peaceful way and they may not carry weapons.

The Regulation of Gatherings Act (1993) gives people rights to organize demonstrations and gather together, but it also gives guidelines for doing this, such as providing authorities with at least 7 days notice of the intention to hold a march, giving names, purpose of the event, the place of the gathering or the route of the march and the numbers of people expected to take part. It also says the police can disperse a crowd, using reasonable force, if they believe there is a danger to people or property.

SECTION 18: FREEDOM OF ASSOCIATION

Everyone has the right to associate with whoever they want, for example, workers joining together and meeting in a trade union.

SECTION 19: POLITICAL RIGHTS

Everyone has the right and is free to make political choices, such as the right to:

- Form a political party
- Join any political party
- Encourage other people to join a political party
- Campaign for a political party or cause

ELECTIONS

Every adult citizen (18 years and older) has the right to free, fair and regular elections and to vote in secret in elections. *(See page 63 Voting in elections)*

SECTION 20: CITIZENSHIP

Your citizenship is protected and cannot be taken away from you.
(See page 41 Citizenship)

SECTION 21: FREEDOM OF MOVEMENT AND RESIDENCE

Everyone has the right to move and live anywhere in South Africa and to enter and leave South Africa as they choose. They also have a right to a passport.

SECTION 22: FREEDOM OF TRADE, OCCUPATION AND PROFESSION

Every citizen has the right to choose their trade, occupation or profession freely. Laws can be passed to regulate how people practice their trade, occupation or professions.

SECTION 23: LABOUR RELATIONS

Everyone has the right to fair labour practices. Workers have the right to form and join trade unions and go on strike. Employers have the right to form and join employers' organizations.

Trade unions and employers' organisations have the right to:

- Make decisions about their own administration, programmes and activities
- Organise
- Form and join a federation
- Engage in collective bargaining

The right to strike and lock-out – While workers have a right to strike in terms of the Constitution, the right for employers to lock out their workers is not specifically included in the Constitution. The *Labour Relations Act* says however that employers have the right to lock-out in certain situations.

(See page 234 Taking industrial action)

SECTION 24: ENVIRONMENT

Everyone has the right to:

- An environment that is not harmful to their health or well-being
- Have the environment protected for present and future generations

The government must pass laws that prevent pollution and damage to our natural resources, promote conservation and make sure that natural resources are developed while also promoting the economic and social development of people.

(See page 467 Environmental law)

SECTION 25: PROPERTY

No one can have their property taken away from them unless this is done according to a law.

EXPROPRIATING PRIVATE PROPERTY

The government can take a person's land away from them if:

- It needs the land for public purposes, *or*
- It is in the public's interest, for example, if the government needs the land for its land reform programme.

If the government takes land from a person they must pay the person compensation. There are certain things to think about when a landowner and the government are deciding how much compensation to pay for the land. These are:

- The history of how the property was bought and what it was used for before
- How much the owner has improved the property
- What the property is being used for now
- The market value: what the price of the property would be if a private person or business bought it
- How much the government can pay: how much money the government has in its budget to pay for the property
- What the government wants to do with the property

EXAMPLE

The government wants to build a dam to provide water for a community. They want to build the dam on your property. The government can take the land from you but they must pay you for the land. The amount of money the government will pay can either be agreed between you and the government, or it can be decided by a court if you cannot agree.

LAND REFORM

Section 25 says the government must make laws and take other steps to help people or communities get land to live on.

(See page 429 Land and housing)

LABOUR TENANTS

If a person has been living on land which they were not allowed to own because of apartheid laws, they will now be able to own this land or be paid compensation for it. An example of this is people who live on farms as labour tenants. The *Extension of Security of Tenure Act* has been passed by the government which gives labour tenants certain rights in terms of Section 25.

(See page 436 Land tenure reform)

SECTION 26: RIGHT OF ACCESS TO HOUSING

Everyone has the right to have access to adequate housing. The government must take reasonable steps within its available resources to provide people with housing and access to land.

The fact that it is the government's duty only to provide housing 'within its available resources' means that the right to provide housing is limited to what the government can afford. The Constitutional Court has stated that there are three parts that make up the government's obligation to provide housing:

- What are reasonable measures that the government should take
- What steps should government take to steadily implement this right in stages over time
- What resources are available to make this possible

EVICCTIONS

This section protects people from being evicted from their homes or from having their homes demolished unless a court has heard the person's case and decided that he or she must leave. In this case the court must give an eviction court order.

(See page 437 Extension of Security of Tenure Act [ESTA])

(See page 441 Prevention of Illegal Eviction from and Unlawful Occupation of Land Act [PIE])

SECTION 27: RIGHT OF ACCESS TO HEALTH CARE, FOOD, WATER AND SOCIAL SECURITY

Everyone has the right to have access to:

- Health care services (including child birth facilities)
- Enough food and water
- Social security (which means support for people who can't support themselves or their dependants)

The section says government must pass laws and have policies that provide welfare assistance for the people who need it the most. *(See page 293 Social Grants)*

However, section 27 also says that it is the government's duty to provide access to these facilities only 'within its available resources'. This means the government's duty is limited to what it can afford. But, the section says the government must improve these services over time.

Emergency medical treatment – Everyone is allowed to have access to emergency medical treatment.

SECTION 28: CHILDREN'S RIGHTS

A child is anyone who is under the age of 18. Every child has the right:

- To a name and a nationality from the day they are born
- To proper care by parents or a family member, or by someone else if the child has to be taken away from the family
- To enough food, shelter, basic health care and social services
- To be protected from being mistreated, neglected or abused
- Not to be forced to work or given work which is not suitable for a child
- To have a lawyer paid for by the government, if the child has to appear in court
- Not to be used in wars
- To be protected during times of war

Whenever a decision is made about a child, the most important thing that must be thought about is what would be in the best interests of the child.

(See page 353 Child abuse and neglect)

(See page 304 Social grants for children below the age of 18 years)

Children's rights if they are detained – A child may only be detained if it is absolutely necessary, and it must be for the shortest possible time. A child has the right to be kept separately from other detained people who are over 18 and must be treated and kept in conditions that take into account the child's age. A detained child also has all the rights of any other detained person.

(See page 32 Section 35: Arrested, detained and accused persons)

SECTION 29: EDUCATION

Everyone has the right to:

- A basic education, including adult basic education
- Further education, which the government must make available and accessible

Everyone has the right to be taught at a government school in their own language but only if this is practical and if the government can afford it.

SECTION 30: LANGUAGE AND CULTURE

Every person has the right to use their own language and follow the culture that they choose but they cannot do anything that goes against the rights of other people.

SECTION 31: CULTURAL, RELIGIOUS AND LINGUISTIC COMMUNITIES

Communities have the right to enjoy a shared culture, practice a shared religion and use their language. But they cannot do anything that goes against the rights that other people have.

SECTION 32: ACCESS TO INFORMATION

If they need it to protect any of their rights, everyone has the right to have access to information which the *government* has, and/or *information that someone else has*.

EXAMPLE

In the past accused people were not allowed to have access to the police dockets that included witnesses' statements, reports of the investigation, and other information about their cases, unless the state agreed to give it to them. The Constitutional Court has said an accused person has the right to have access to the docket, because section 32 gives people the right of access to information they need to protect or exercise their rights.

The Promotion of Access to Information Act gives people a right of access to all kinds of government information, providing very limited reasons why officials can refuse to give such information. This Act is a good weapon against corruption and makes the government transparent and accountable.

The Protection of Disclosures Act gives protection to 'whistle-blowers' - people who speak out against corruption, dishonesty or bad administration and who believe at the time that what they are saying is the truth. They are protected from internal disciplinary action, intimidation and harassment if they have 'blown the whistle' on someone or a business.

SECTION 33: JUST ADMINISTRATIVE ACTION

Section 33 guarantees that administrative action will be reasonable, lawful and procedurally fair. It also makes sure that you have the right to request reasons for administrative action that negatively affects you. The section says government must pass laws that will:

- Provide for a review of the actions of a government official (or department) where the action might have gone against a person's rights, and
- Make it a duty of the government and all government bodies to put this right into practice, be just and promote an efficient administration

The Promotion of Administrative Justice Act 2 (2000) (PAJA) says that all decisions of every administration at every level of government must be lawful, procedurally fair and reasonable and must follow the rules in the Act. Examples of administrative action are: applying for an ID or birth certificate, applying for a first time home owners subsidy, applying for a work or residence permit, applying for refugee or asylum seeker status. The Act applies to all government departments, the police and army and private people who exercise public powers or perform public functions (for example, ESKOM, Telkom and the SABC). A person whose rights have been wrongly affected can ask for reasons to be given in writing to explain the administrative action taken. The Act also provides for review of administrative action by a court or tribunal.

WHAT ARE THE REQUIREMENTS OF LAWFULNESS, PROCEDURAL FAIRNESS AND REASONABLENESS IN TERMS OF THE PAJA?

LAWFULNESS

When the state has a legal duty to act in a certain way and fails to do so, it is acting unlawfully.

PROCEDURAL FAIRNESS

The procedure that the government follows in making an administrative decision must be fair. If there is a set of established rules that the government must follow in coming to the decision then these must be properly followed otherwise the decision can be challenged. However, the common law rule – *audi alteram partem* rule – is one rule that the government must always follow in making a decision. This rule says that a person whose rights are or may be affected by an administrative decision must be allowed to state his or her concerns before the decision is made.

REASONABLENESS

Whether an administrative action is reasonable or not depends on the circumstances surrounding the decision, i.e. the environmental considerations against which the decision was taken.

A court will be asked to test whether the decision was reasonable or not, such as:

- Was the decision the suitable one to make in the circumstances?
- Was the decision necessary?
- Was the decision proportional? In other words does it balance the competing interests of all the people who will be affected by the decision?

See the example on the opposite page.

WHAT CAN YOU EXPECT FROM THE ADMINISTRATION?

When you apply for something (for example, a social grant) or when the administration decides to request something from you, you can expect to be:

- Told what decision is being planned before it is taken
- Allowed to tell your side of the story before a decision is made
- Told what the decision is and of your right to internal appeal or review
- Told that you have the right to request reasons
- Given proper written reasons for the decision
- Able to challenge the decision in court

EXAMPLE

Certain people in your community live in an informal settlement near the coast which is close to an expensive coastal holiday resort where people from the city own holiday houses. A chemical company has been granted permission by the local authority to set up a chemical production plant very close to the informal settlement.

It is likely that this chemical plant will harm the environment and possibly the health of people in the community. These people want to find out how the chemical company got permission to set up the production plant, and what other action the chemical company may be thinking of taking. They have formally requested the local authority to provide them with information about the new chemical production plant so that they can use the information to comment on whether they think the permission for the plant should have been granted or not. Any decision taken by the local government is an administrative decision.

What can the community do?

- *They can use PAJA to get written reasons from the local authority for their decision to allow the erection of the chemical production plant.*
- *They can use the PAJA to challenge the procedural fairness of the municipality decision as their rights are affected by the decision and they were not consulted prior to it being made.*
- *They can use the PAJA to challenge the reasonableness of the decision. Here the court would consider all of the surrounding circumstances to see whether the decision was suitable, necessary and proportionate.*

Other rights that are potentially affected in this example include the right to equality if the nearby (wealthy) resort has not been negatively affected in the same way as the informal settlement, and the right of access to information because the community's request for information about the chemical production plant has been ignored.

WHAT CAN YOU DO?

If you think that the administrative decision taken against you might be wrong, you can:

REQUEST REASONS FROM THE ADMINISTRATION

Requests must:

- Be in writing (if you can't write, ask a friend or relative to help you)
- Say what decision you are requesting reasons for
- Say why you think the decision is wrong
- Include your name, postal address, email address, fax and telephone numbers
- Be sent by post, fax, email or delivered by hand

You must be given reasons within 90 days of the administrator receiving the request. You can ask for the reasons to be given in writing.

USE INTERNAL APPEAL PROCEDURES

If you are not satisfied with the reasons given, then you can use internal appeal procedures if there is one. Some departments have an internal appeal procedure which you can use, for example, the home affairs department has an appeal board. You have to use any internal appeal procedure before taking any other action. The department must explain how the procedures work and how to make an appeal.

GO TO COURT

If there is no internal appeal procedure, or if you have used the procedure and are still not satisfied, you can ask a court to review the decision. This must be done:

- Within 6 months of any internal appeal having been decided
- (Where there is no internal appeal) within 6 months of finding out the decision.

USE OTHER REMEDIES

Taking a matter on review is expensive. Cheaper ways of finding assistance include:

- Using internal appeal procedures
- Complain to the area or regional manager of the department concerned
- Complain to the ward councilor or provincial MEC of the relevant department
- Refer the complaint to the public protector, the South African human rights commission
- Approaching a justice centre (or if there is no justice centre, the legal aid board) for legal assistance to take the case up

SECTION 34: ACCESS TO COURTS

Everyone has the right to have any legal problem or case decided by a court or an independent body.

SECTION 35: ARRESTED, DETAINED AND ACCUSED PERSONS

ARRESTED PEOPLE

If a person is arrested, they have the right to:

- Keep silent
- Be told, in a language that they understand, that they have the right to keep silent and what will happen if they do not keep silent
- Not to be forced to make a confession or to admit anything that could be used against them during their trial
- Be taken to court within 48 hours of their arrest
- Be charged and released, either on warning or on bail, unless there is a good reason to keep the person in jail

DETAINED PEOPLE

If a person is detained (kept in jail or a police cell), either while they are waiting for their trial, or after they have been sentenced, they have the right to:

- Be told in a language they understand why they are being detained
- Be informed immediately that they can have a lawyer
- Choose their own lawyer
- Have the government pay for a state lawyer, if they cannot afford one and injustice might result if they are not given a lawyer
- Be kept in proper conditions, including being allowed exercise and getting food
- Accommodation, food, reading material and medical treatment at the state's expense
- Speak to and be visited by the person's husband, wife or partner, their family, a religious counselor, and their own doctor
- Go to court to challenge the reasons for their detention, and to be released if there are not lawful reasons for being detained

ACCUSED PEOPLE

A person accused of committing a crime must be given a fair trial. This includes the right to:

- Be treated as an innocent person
- Be told what the charge is against them

- Be told that they have a right to a lawyer
- Their own lawyer or a lawyer paid for by the government, if they cannot afford one and injustice might result if they are not given a lawyer
- Be given enough time to prepare their defence
- A public trial in an ordinary court
- Be present during their trial
- Keep silent
- Not be forced to give evidence against themselves
- Call witnesses and challenge any witnesses used against them
- Be tried in a language that they understand, or to have an interpreter
- Not be convicted for doing something which became a crime after they did it, in other words, if it was not a crime when they did it
- Be sentenced within a reasonable time if they are convicted
- Be sentenced to the least serious punishment, if the punishment for what they have done has changed since they did it
- Appeal against their conviction and sentence to a higher court
- Have their case reviewed by a higher court
- Not be tried twice for the same crime

If the state gets evidence against a person by going against one of their rights, this evidence will not be allowed in court.

SECTION 36: LIMITATIONS ON RIGHTS

The rights in the Bill of Rights can be limited if this is reasonable and justifiable in an open and democratic society that is based on human dignity, equality and freedom.

These are the factors that a person or court must take into account if a right is to be limited:

- The nature of the right
- The importance of the purpose of limiting the right
- How much the right will be limited
- The relation between the limitation and its purpose
- Whether there are better ways to achieve the same purpose

(See page 19 Conflicts in rights)

SECTION 37: STATES OF EMERGENCY

It may be necessary for a government to declare a state of emergency to deal with a major problem facing the country. During a state of emergency the Bill of Rights is usually affected.

The government can only call a state of emergency when:

- The life of the nation is threatened by war, invasion, disorder, natural disaster or other public disorder, *and*
- The state of emergency is necessary to restore peace or order

The state of emergency and any laws passed as a result of the state of emergency can only last for 21 days, unless the national assembly extends this. At least two-thirds (66%) of the members of the national assembly must agree to extend this. They can extend it for 3 months at a time.

There are certain rights that cannot be limited at all, even during a state of emergency. Some of these are:

- The right to human dignity
- The right to life
- The right to equality (race and sex only)
- Freedom from torture

SECTION 38: ENFORCING RIGHTS

The following people can take a case to court, if they believe that a right has been threatened or infringed:

- Anyone representing themselves
- Anyone acting on behalf of another person who cannot take the case to court
- Anyone acting as a member of a group, or in the interests of a group or class of people
- Anyone acting in the public interest
- An association acting in the interests of its members

SECTION 39: INTERPRETING THE BILL OF RIGHTS

When the courts are deciding a case on the Bill of Rights, they must promote the values of an open and democratic society based on freedom and equality. They must look at international laws (such as the Universal Declaration on Human Rights) and at the way courts in other countries have decided similar cases.

Protecting human rights

Chapter 9 of the Constitution creates seven institutions or protection mechanisms for protecting peoples' rights. The institutions are:

- The Public Protector
- South African Human Rights Commission
- Commission on Gender Equality
- Office of the Auditor-General
- Independent Electoral Commission
- Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities
- Independent Communications Authority of South Africa

Other institutions that also protect people's rights are the constitutional court and the land claims court. People can also take cases about human rights abuses to the magistrate's courts and high courts. If you take a case to the magistrate's court or high court, you can represent yourself but usually you would need a lawyer to prepare the papers and to send them to court. This costs a lot of money. The protection mechanisms are free, and people can send in their complaints to be investigated without having to go to a lawyer.

THE PUBLIC PROTECTOR

The public protector represents citizens and watches over the activities of government officials to stop them abusing their powers. The public protector is an independent official and is accountable to the constitution. Public protector officials must act in a transparent way and must send a report of their activities and findings to parliament at least once a year.

The government appoints the national public protector but each province can also have their own public protector that falls under the national office.

HOW IS THE PUBLIC PROTECTOR APPOINTED?

A parliamentary committee consisting of members from each political party in parliament nominates someone to be the public protector. The national assembly and the national council of provinces then approve the nominations. The public protector will stay in office for 7 years but he or she can be removed from this position by the president on grounds of misbehaviour, incapacity or incompetence.

A provincial public protector is appointed by the provincial premier in consultation with the national public protector. The person who is nominated must be approved by a two-thirds majority of the provincial legislature.

THE FUNCTIONS OF THE PUBLIC PROTECTOR

These include:

- To investigate complaints about any of the following:
 - Poor administration of government
 - Government officials who abuse their powers
 - Improper conduct of public officials
 - Corruption of public funds by public officials
 - Any act or omission (something that has not been done) by public officials that results in prejudice to a citizen
- To resolve disputes
- To refer matters to other agencies, for example the Attorney General to prosecute the person who is guilty of any misconduct

WHAT CAN THE PUBLIC PROTECTOR DO?

The Public Protector has the power to do the following:

- Order a person to attend a hearing
- Order a person to give evidence or produce any document
- Enter a person's home or a workplace if this is necessary for an investigation

A person who is being investigated by the Public Protector has the right to give their side of the story and to be represented at the hearing.

MAKING A COMPLAINT TO THE PUBLIC PROTECTOR

Any person can make a complaint to the public protector. If you want to make a complaint you must make an oral or written statement saying:

- What the complaint is about
- Why the public protector must investigate the complaint
- Any other information that may be relevant to the case

The services of the Public Protector are free.

(See page 677 Resources: Public Protector contact details)

SOUTH AFRICAN HUMAN RIGHTS COMMISSION (SAHRC)

The SAHRC promotes respect for human rights and protects human rights. It must educate people about human rights and it can investigate complaints about human rights abuses. If necessary it can arrange for someone to have a lawyer to defend their rights, and it can take cases to court.

The SAHRC is an independent body and is only accountable to the Constitution and parliament. The SAHRC must send a report of its activities to parliament at least once a year. The SAHRC consists of a chairperson and 10 members. The members are nominated and approved by the national assembly and the national council of provinces. Members of the SAHRC can be commissioners for 7 years.

MAKING A COMPLAINT TO THE SAHRC

Anyone can make a complaint to the SAHRC. If you want to make a complaint you must do the following:

- Write down the details of the person who the complaint is about. This must include the name of the person or department, and their address and telephone number.
- Say what the complaint is about.
- Include your own name, address and telephone number.
- Post or fax this to the nearest SAHRC office.

(See page 677 - 678 Resources: SAHRC contact details)

COMMISSION ON GENDER EQUALITY (CGE)

The CGE will protect men and women who complain that they have been discriminated against because of their gender or sex. The CGE will also advise lawmakers on laws that affect equality between men and women, and on the position of women as citizens.

The CGE is an independent body and is only accountable to the Constitution and to parliament. The commission must send a report of its activities to parliament at least once a year. The CGE consists of a chairperson and 7 to 11 members. The national assembly and the national council of provinces nominate and approve members to the CGE. The members of the CGE stay in office for 7 years.

The *Commission on Gender Equality Act* makes no provision for provincial offices.

The functions of the CGE are to:

- Monitor, evaluate, review and report on laws, policies and practices of different government bodies and private businesses that affect gender equality
- Monitor international conventions to make sure that our laws and policies follow these
- Do research about gender equality
- Make recommendations to any legislature (in other words, any government body that makes laws) to adopt new laws to promote gender equality
- Network with institutions and other bodies to promote gender equality
- Educate civil society about gender equality
- Investigate any gender-related issues if someone makes a complaint
- Resolve disputes if someone has made a complaint
- Refer any complaint that it can't resolve to the public protector or the South African human rights commission

WHAT CAN THE CGE DO?

The CGE has the power to:

- Order a person to attend a hearing

- Order a person to give evidence or produce any document
- Enter a person's home or a workplace, if this is necessary for an investigation

The CGE can request any level of government to assist them with an investigation or with any of their functions.

MAKING A COMPLAINT TO THE CGE

Anyone can make a complaint to the CGE. If you want to make a complaint you must do the following:

- Write down the details of the person who the complaint is about. This must include the name of the person or department, and their address and telephone number.
- Say what the complaint is about.
- Include your own name, address and telephone number.
- Post or fax this to the nearest CGE office.

(See page 678 Resources: CGE contact details)

THE AUDITOR GENERAL

The auditor general is the watchdog of all money that is given to the government and spent by them. The auditor general checks the accounts of all national and provincial government departments and all local governments to make sure that money is being accounted for.

COMMISSION FOR THE PROMOTION AND PROTECTION OF THE RIGHTS OF CULTURAL, RELIGIOUS AND LINGUISTIC COMMUNITIES (CULTURAL COMMISSION)

This commission was established in terms of the *Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act, 2002*. Its purpose is to promote and protect the rights of different cultural, religious and language communities. It must promote and develop peace, tolerance and national unity amongst these communities, on the basis of equality, non-discrimination and freedom of association. Since the promulgation of the Act, 18 members have been appointed to serve on the commission.

INDEPENDENT ELECTORAL COMMISSION (IEC)

This commission has been set up to manage elections to make sure that they are free and fair.

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA (ICASA)

ICASA exists to monitor all aspects of broadcasting in South Africa. For example, it must make sure that radio and television broadcasts are fair and that they represent the views of South African society.

(See page 678 Resources: ICASA contact details)

THE LAND CLAIMS COMMISSION

The land claims commission was established in terms of Section 25 of the Constitution to mediate and decide on claims to land made by people who had been forcibly removed under the laws of apartheid.

PROBLEMS

1. Taking a case to the Human Rights Commission

Joe Mkhize applies to go to Welmoed High School. The school is only two blocks away from where he lives with his parents. At Welmoed High School most of the students speak Afrikaans and all of the lessons are in Afrikaans. Joe speaks a different language from the language used at this school. The school governing body rejects his application to attend the school. They say they only want Afrikaans-speaking people to come to Welmoed High School. They say it is their right to refuse to let him register. Joe's parents believe they have a right to send Joe to the school.

WHAT ARE HIS RIGHTS?

Joe has a right to attend Welmoed High School in terms of section 9(3) of the Bill of Rights which says he has a right not to be discriminated against on the basis of his language. Section 29 also says he has a right to an education.

People do have a right to develop their own language and culture, but they cannot exclude people from a government school on the basis of their language or religion, or any other factor listed in the 'equality' clause.

WHAT CAN YOU DO?

You can help Joe and his parents to make a complaint to the South African human rights commission.

(See page 36 South African Human Rights Commission)

2. Making a complaint to the Public Protector

Mrs Jansen applied for her Older Person's Grant 8 months ago. She has still not received a penny of this grant. She finds out that there are some people who never have to wait for their grants. When she asks the SASSA officer for reasons for the delay he says he doesn't know what the reasons are for the delay. Even when she asks him to investigate he says he doesn't have the time. She feels helpless and decides to take action because she is desperate for the pension payments.

WHAT ARE HER RIGHTS?

The public protector has a duty to investigate state officials and bodies if, by their conduct, people believe they are not doing their jobs properly or abusing their powers in any way. Mrs Jansen has a right to have access to information (s 32) held by the state that will help her exercise her rights. She also has the right to just administrative action (s 33) and to be given reasons why her grant has taken so long to arrive.

WHAT CAN YOU DO?

You can help Mrs Jansen make a complaint to the public protector.

(See page 35 Making a complaint to the Public Protector)

3. Taking a case to the Commission on Gender Equality

Maria Johannes is a farmworker. She is a member of a farmworker's union. When she falls pregnant her employer tells her to leave and he employs someone else in her place. Maria is angry and she discusses this with other women on the farm. Many of the women feel angry because they only get work when it suits the farmer. They all agree that the farmer's actions are unfair and they decide to take further steps.

WHAT ARE THEIR RIGHTS?

The Constitution and the *Employment Equity Act (EEA)* say there can be no discrimination on grounds of gender, sex and pregnancy. In this case Maria Johannes and the other female workers have been discriminated against. The commission on gender equality will protect people (men and women) who complain that they have been discriminated against because of their gender or sex.

WHAT CAN YOU DO?

You can help Maria Johannes and the other female workers make a complaint to the commission on gender equality.

(See page 37 Making a complaint to the CGE)

CHECKLIST

Reporting human rights complaints

Human rights abuses: Report these to the South African Human Rights Commission.

(See page 36 SAHRC)

Gender-specific human rights abuses (female and male): Report these to the Commission on Gender Equality.

(See page 36 CGE)

Complaints about government officials: Report these complaints to the Public Protector.

(See page 35 Public Protector)

Complaints about unreasonable or unfair administrative decisions: *Follow up the complaint in terms of the Promotion of Administrative Justice Act, 2000.*

(See page 29 Section 33: Just Administrative Action)

Complaints about police officials: Report these to the Independent Police Investigative Directorate (IPID).

(See page 141 Reporting a case of police misconduct)