



# 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.

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## **What is a Constitution?**

The 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.

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## **What is a democracy?**

Democracy means that everyone has a say in 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	
<b>Citizens can participate in government</b> It is everyone's right and duty to participate in government.	<b>Economic freedom</b> People can own property and businesses and they can choose their own work and join labour unions.
<b>All people are equal before the law</b> 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.	<b>Controlling abuse of power</b> 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.
<b>Political tolerance</b> 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.	<b>Human rights</b> Democracies aim to respect and protect the human rights of all and often use a Bill of Rights to do so.
<b>Accountability</b> Officials who are elected and appointed in government are accountable to the people for actions and decisions.	<b>Multi-party system</b> 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.
<b>Transparency</b> 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.	<b>The rule of law</b> No one is above the law, including the president. This means that the law must treat everyone in an equal and fair way.
<b>Regular, free and fair elections</b> 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.	<b>The separation of powers between different arms of government</b> 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: pg 100: Democracy and Public Participation)

## Development of Constitutions in South Africa

Between 1910 and 1994, there were four Constitutions in South Africa:

1. 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 for the majority of South Africans.
2. 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.
3. 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.
4. 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.

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### **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.

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## 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.

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## 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 pg 14: 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 democratically elected governments can abuse this power. There are cases of governments that were elected in democratic elections but 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 abusing their powers in the future.



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
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## **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.

## EXAMPLE

*In customary law, a biological father does not have automatic rights and responsibilities to his children. Rather, a father's right to his biological children is linked to marriage and the question of lobola. If lobola was agreed then the child belongs to the father's family. If it was not agreed, then the child belongs to the mother's family. But in the case of Hlope v Mahlalela, the court did not approve of the role of lobola in deciding the responsibilities of parents and their rights and instead focused on the best interests of the child, which is a principle enshrined in the Constitution.*

## 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 pg 17: *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 powers 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 its 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 fair decisions, 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 the 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.

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## **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 that 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 pg 16: *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 its 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 pg 19: *Chapter 6: Provinces*; See pg 21: *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 pg 20: *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.*

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## 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 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 pg 66: 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 12 official languages. These are: Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu and sign language.

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.

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## Chapter 2: The Bill of Rights

Chapter 2 of the Constitution contains the human rights which are protected in South Africa.

The section 'Human Rights' includes a summary of the Bill of Rights (Sections 7 – 39 of Chapter 2 of the Constitution) and other topics related to human rights.

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## Chapter 3: Co-operative government

Government works at national, provincial and local levels. (See pg 12: *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, and consulting with each other on things of common interest

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## 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 two 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 pg 99: *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. However, 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 pg 20: Schedule 4; See pg 21: Schedule 5; See pg 118: Making new laws (at national level); see pg 126: Making new laws (at provincial level)*)

### **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.

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## **Chapter 5: The President and the national executive**

The national executive is the body that 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. The National Assembly elects them 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 they are 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 they have 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 government's policies on education. The different departments can refer bills to parliament to have them made into laws.

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## **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.

## 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)

## SCHEDULE 5: FUNCTIONAL AREAS OF PROVINCIAL LEGISLATURES

### PART A

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>• Abattoirs</li> <li>• Ambulance services</li> <li>• Archives that belong to the provinces</li> <li>• Libraries (but not national libraries)</li> <li>• Liquor licences</li> <li>• Museums (but not national museums)</li> </ul> | <ul style="list-style-type: none"> <li>• Provincial planning</li> <li>• Provincial cultural matters</li> <li>• Provincial recreation and amenities</li> <li>• Provincial sport</li> <li>• Provincial road and traffic</li> <li>• Vets</li> </ul> |
|---|--|

### PART B

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

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>• Beaches and amusement facilities</li> <li>• Billboards and display of advertisements in public places</li> <li>• Cemeteries, funeral parlours and crematoria</li> <li>• Cleansing</li> <li>• Control of public nuisances</li> <li>• Control of businesses that sell liquor to the public</li> <li>• Facilities to accommodate and bury animals</li> <li>• Fences</li> <li>• Licensing of dogs</li> <li>• Licensing and control of businesses that sell food to the public</li> </ul> | <ul style="list-style-type: none"> <li>• Local amenities</li> <li>• Local sport facilities</li> <li>• Markets</li> <li>• Municipal abattoirs</li> <li>• Municipal parks and recreation</li> <li>• Municipal roads</li> <li>• Noise pollution</li> <li>• Pounds</li> <li>• Public places</li> <li>• Refuse removal and refuse dumps</li> <li>• Street trading</li> <li>• Street lighting</li> <li>• Traffic and parking</li> </ul> |
|---|---|

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## 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 pgs 20 and 21: Schedules 4 and 5)

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## 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, they 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 below: *examples of Constitutional Court cases*)

## 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, 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 KwaZulu-Natal 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, they can appeal to:

- The Constitutional Court, if it is a constitutional matter
- The Supreme Court of Appeal in any other matter (*See pg 201: 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, they 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 pg 187: Structure of the Courts*)

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## 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 pg 54: 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 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, ensures that public officials follow correct procedures, and so on.

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## **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 pg 228: Reporting a case of police misconduct*)

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## **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 pg 135: Traditional leadership*)

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## **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.

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## **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 provides a summary of the South African Bill of Rights, which is Chapter 2 of the Constitution.

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## **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 has 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.

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## **Indivisibility of rights**

Rights are often divided into different categories, such as first, second and third-generation rights, 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).

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## 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 AND 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 pg 53: *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.*

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## 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 Africa 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.

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### **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 themselves 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.

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## 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 pg 10: Changing or amending the Constitution*)

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

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## 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 pg 10: 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.

## 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.

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## 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 pg 345: Employment Equity Act)*

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 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](http://www.doj.gov.za) and click on Equality legislation for contact details of Equality Court Managers in the different provinces).

According to the South African Human Rights Commission, the right to equality remains the right most frequently litigated by the Commission in the Equality Courts. Most of these cases involve the use of derogatory words or comments with racial undertones. After race, discrimination based on disability and ethnic origin accounts for the largest number of equality-related complaints received by the SAHRC.

#### 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.*

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## Section 10: Right to human dignity

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

## EXAMPLE

*The Department of Basic Education's 2021/2022 annual report showed that 2,982 schools still used pit latrines. This is a violation of the right to dignity as well as life, health and safety.*

## 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 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 pg 224: *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 cannot be forced to have one.

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## **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, inhumane 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.

Among countries that collect gender-based violence (GBV) statistics, South Africa has one of the highest rates of GBV in the world. In May 2022, the Committee on the Elimination of Discrimination against Women (CEDAW) reported that South Africa's low levels of prosecution and conviction in domestic violence cases and the frequent failures by the police to serve and enforce protection orders, exposed survivors to repeated abuses and resulted in the violation of women's rights.

### **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 their right not to be treated in a degrading way.

## **XENOPHOBIC ATTACKS**

There have been many xenophobic attacks on refugees and migrants, including people being killed if they fail to provide proof of their identity. An anti-migrant movement has been established in many provinces. These actions are a violation of the right to security of the person.

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### **Section 13: Slavery, servitude and forced labour**

No form of slavery or forced labour is allowed.

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### **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 from being intercepted.

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### **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.

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## **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.

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## **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, the 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.

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## **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.

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## **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 pg 102: *Voting in elections*)

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### **Section 20: Citizenship**

Your citizenship is protected and cannot be taken away from you. (See pg 66: *Citizenship*)

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### **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.

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### **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.

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### **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 pg 377: *Taking industrial action*)

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## 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 pg 735: *Environmental law*)

### EXAMPLE OF THE RIGHT TO A HEALTHY ENVIRONMENT

*In 2022, in a case involving miners from a colliery in Mpumalanga, the High Court stated that the province's unsafe level of air pollution was in breach of Section 24(a) as well as other relevant sections of the Constitution that says everyone has a right to an environment that is not harmful to their health and well-being.*

## Section 25: Property

No one can have their property taken away from them unless this is done according to 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 want to do with the property

#### EXAMPLE

*The government wants to build a dam to provide water for the 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 pg 669: *Land and housing*)

#### LABOUR TENANTS

If a person has been living on land that 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* gives labour tenants certain rights in terms of Section 25. (See pg 682: *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

## EVICTIONS

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 they must leave. In this case, the court must give an eviction court order. (See pg 683: *Extension of Security of Tenure Act [ESTA]*) (See pg 690: *Prevention of Illegal Eviction from and Unlawful Occupation of Land Act [PIE]*)

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## Section 27: Right of access to health care, food, water and social security

Everyone has the right to have access to:

- Healthcare services (including childbirth facilities)
- Enough food and water
- Social security (which means support for people who can't support themselves or their dependents)

The section says government must pass laws and have policies that provide welfare assistance for the people who need it the most. (See pg: 463 *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.

## EXAMPLE

*In 2022, KwaZulu-Natal and the Eastern Cape experienced extreme rainfall and flooding. Damage to water infrastructure resulted in widespread disruptions to water suppliers throughout the provinces, leaving communities with no or interrupted supplies for months. There was no systematic effort on the part of government to ensure that people had access to the water they needed during this period. This, alongside the damage caused to houses, created a sanitation crisis as the floods destroyed some communal toilets, forcing some people to use the bushes. Several health facilities in KZN had insufficient water suppliers. There were also severe water shortages in the Nelson Mandela Bay Metropolitan Municipality in the Eastern Cape, which had faced drought since 2016. The water crisis was made worse by the failure of local authorities to fix leaks, and the city lost an estimated 29% of its water supply. These are examples of the violation of Section 27 of the Bill of Rights, where the government has a duty to provide access to these facilities and 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 pg 555: *Child abuse and neglect*) (See pg 480: *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 Section 35: Arrested, detained and accused persons)*

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## **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.

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## **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.

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## **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.

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## **Section 32: Access to information**

If they need it to protect any of their rights, everyone has the right to have access to information that 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.*

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## 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 homeowners subsidy, applying for a work or residence permit, and 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?

### **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 and 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 that you can use, for example, the Department of Home Affairs 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 councillor 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
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## Section 34: Access to courts

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

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## Section 35: Arrested, detained and accused person

### 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 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 counsellor, and their own doctor
- Go to court to challenge the reasons for their detention and to be released if there are no 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 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 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.

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## **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 pg 30: Conflicts in rights*)

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## **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

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## **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

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## **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.

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## **The Public Protector**

The Public Protector represents citizens and watches over the activities of government officials to stop them from 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 they 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, including the nature of the complaint and its background and history
- Why the public protector must investigate the complaint
- The steps you have taken to solve the complaint yourself. You should mention names, dates and what was said. Copies of any correspondence between you and the officials should be attached to your letter of complaint
- Any other information that may be relevant to the case
- Your postal address and a telephone number where you can be reached

You can write or ask someone to write on your behalf. You can also phone the Public Protector's office and report your complaint. Complaints can also be lodged at visiting points and workshops conducted by the office. Visiting points are areas that have been identified for the purpose of conducting interviews with complainants, and they are found in all provinces. Visiting points are serviced at least once a month.

Use any of the following contacts to make a complaint:

- Email: [registration2@pprotect.org](mailto:registration2@pprotect.org)
- Telephone: 012 362 3473
- Toll-free: 0800 112 040

The services of the Public Protector are free. (See pg 1055: Resources: Public Protector contact details)



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## 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 are unsure if you can lodge a complaint, you can visit any of the nine Provincial Offices of the SAHRC or contact them using the following contact details:

- Email: [complaints@sahrc.org.za](mailto:complaints@sahrc.org.za)
- Telephone: 011 877 3600

If you want to make a complaint, you must do the following:

- Lodge the complaint at the Provincial Office where the alleged violation took place. If it is not possible to establish where the violation took place, then it should be lodged at the Provincial Office where the respondent resides, carries on business or is employed.
- In the complaint, include the following information:
  - Indicate whether the complaint is being lodged on your own behalf of on behalf of another person, group or class of people, organisation, government department, etc.
  - Full names of the complainant
  - Race and gender of the complainant
  - Physical and postal address of the complainant
  - Telephone or Fax numbers and email address of the complainant
  - Preferred method of communication
  - Full details of the violation, which includes:
    - Date and place where it took place
    - Type of human right alleged to be violated

- Particulars of any person, group, or class of people, organisation, government department responsible for the violation
- Names and contact details of the people who can provide information relevant to the complaint
- Name and contact details of anyone who has been involved in trying to resolve the complaint
- Whether the complaint is urgent and reasons for this
- Any other relevant information or supporting documents that can be used in the investigation

A complaint to the Provincial Office of the SAHRC should preferably be in writing, but a verbal complaint can be made in person or by telephone.

The right to lodge a complaint expires three years after the violation has taken place unless there is a good reason for the delay. (*See pg 1056: Resources: SAHRC contacts*)

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## **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 for an alleged violation. The complaint can be in any language. Your complaint should include the following information:

- Your name, address and telephone number
- Who you are complaining about and their contact details
- What happened to you, when it happened and who was involved
- What law you think has been broken and how
- Whether you have made a complaint anywhere else and, if so, what happened

You can use any of the following ways to make a complaint:

- By post
- Send a hard copy complaint form
- Complete an online complaint form
- By email

Follow the link on the CGE website for access to the complaint form, online complaint portal and email address: <https://cge.org.za/complaints/>

If you do not receive an acknowledgement of your complaint within 7 days, you can send an email to the CGE or call them on 011 304 7182.

After receiving your complaint an investigation/legal officer will be allocated to look into your complaint. The officer will call you to discuss how the matter will be taken forward. (*See pg 1058: Resources: CGE contact details*)

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## **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.

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## **Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (Cultural Rights 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.

### **MAKING A COMPLAINT TO THE CULTURAL RIGHTS COMMISSION**

If a community believes their cultural, religious or linguistic rights are being denied or violated, they can make a complaint to the Cultural Rights Commission.

A complaint should be made in writing, using the correct form. The complaint can be made in the following ways:

- At the Cultural Rights Commission office
- Email: [info@crlcommission.org.za](mailto:info@crlcommission.org.za)
- Telephone: 011 358 9100
- Any other mode of communication

The Complainant must complete the correct complaint form, including their personal details.

Go to the Cultural Rights Commission website to access the form: [www.crlcommission.org.za](http://www.crlcommission.org.za).

The Commission will assist those who cannot write or the disabled to put their complaints in writing.

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## **Independent Electoral Commission (IEC)**

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

### **MAKING A COMPLAINT TO THE IEC**

If you want to make a complaint/enquiry/request/suggestion or provide feedback to the IEC, you can go to their website and send them a message:

<https://www.elections.org.za/pw/About-Us/Feedback-Online-Form>

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## **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.

### **MAKING A COMPLAINT TO ICASA**

#### **WHAT TYPES OF COMPLAINTS CAN YOU LODGE WITH ICASA?**

You can lodge a complaint against any service provider licensed by ICASA to provide communications services such as broadcasting, telecommunications or postal services.

Categories of complaints include complaints against:

- Telecommunications service providers
- Postal service providers
- Broadcasting service providers

#### **HOW TO LODGE A COMPLAINT WITH ICASA**

##### ***Complaints against providers of telecommunications and postal services***

- First, lodge a complaint with your service provider and get a reference number for your complaint
- Give the service provider 14 working days to resolve the complaint

- If the service provider fails to resolve the complaint in this time or if the response is not satisfactory, then you can refer the complaint to ICASA.
- Complaints must be in writing and can be lodged in the following ways:
  - Use the ICASA online complaints portal via the website: <https://www.icasa.org.za/pages/lodge-a-complaint>
  - Fill out the complaint form: <https://www.icasa.org.za/consumer-publications/consumer-complaints-form>
    - Email it to: [consumer@icasa.org.za](mailto:consumer@icasa.org.za)
    - Fax it to: 012 568 3444

#### ***Complaints against providers of broadcasting services***

- All broadcasting-related complaints must be submitted in writing. You can send your complaint through:
  - Email: [consumer@icasa.org.za](mailto:consumer@icasa.org.za)
  - Fax: 012 568 3444
  - Post: Address your complaint to the relevant ICASA office.
  - In-Person: Visit an ICASA office and submit your written complaint. (See pg 1059: Resources: ICASA contact details)

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### **Land Claims Commission (LCC)**

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

### **Problem 1: Taking a case to the South African 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 pg 57: South African Human Rights Commission*)

### **Problem 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 pg 56: Making a Complaint to the Public Protector*)

### **Problem 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 farmers' 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 pg 59: Making a Complaint to the CGE*)



## Checklist

### Reporting human rights complaints

- **Human rights abuses:** Report these to the South African Human Rights Commission (See pg 57: *South African Human Rights Commission (SAHRC)*)
- **Gender-specific human rights abuses (female and male):** Report these to the Commission on Gender Equality (See pg 58: *Commission on Gender Equality (CGE)*)
- **Complaints about government officials:** Report these complaints to the Public Protector (See pg 55: *The Public Protector*)
- **Complaints about unreasonable or unfair administrative decisions:** Follow up the complaint in terms of the *Promotion of Administrative Justice Act, 2000* (See pg 47: *Section 33: Just Administrative Action*)
- **Complaints about police officials:** Report these to the Independent Police Investigative Directorate (IPID) (See pg 228: *Reporting a case of police misconduct*)



# Citizenship

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# Introduction

To be a citizen of a country means that you belong to that country and have the right to live there. A country must protect its citizens if they need help when they are travelling in other countries.

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## Laws governing citizenship

- Children's Act No.38 of 2005
- Children's Amendment Act No.41 of 2007
- Immigration Act No.13 of 2002
- Immigration Amendment Act, No.3 of 2007
- Immigration Amendment Act, No.13 of 2011
- Refugees Act No.130 of 1998
- Refugee Amendment Act No.17 of 2017
- South African Citizenship Act No.88 of 1995
- South African Citizenship Amendment Act No.17 of 2010

### NOTE

*There are a number of laws undergoing reform, which may change the requirements described in this chapter. In November 2023, the government released a White Paper on Citizenship, Immigration and Refugee Protection: Towards a complete overhaul of the migration system in South Africa. The White Paper was released for public comment. South Africa has different pieces of legislation dealing with citizenship, immigration and refugee protection, which are often not aligned with each other. The White Paper proposes that the government must review all the legislation relating to citizenship, immigration and refugee protection and include it all in a single law.*

## What does South African citizenship mean?

The Constitution gives many rights to 'everyone' but keeps certain rights for citizens only. If you are a citizen of South Africa, you have the right to:

- Vote

- Stand as a candidate in elections
- Live in any area in South Africa
- Choose your trade, occupation or profession
- Be given a South African passport for travel to other countries
- Come to South Africa even if you have lived somewhere else for a long time

None of these rights apply to people who are not South African citizens, even if they have lived legally in this country for many years until they become South African citizens. The government can pass laws which give certain rights to non-citizens but government can also pass a law which takes the vote away from them.

People who are not citizens must have permission to enter South Africa. If they want to stay, they must get a permit to live here.

South African citizenship and immigration legislation is very complicated, so this chapter only presents an outline of the laws. It definitely does not cover everything in our *Citizenship Act* nor the *Immigration Act*, or the laws that came before them. It is written to help you to know what kind of documents an advice seeker may need to collect before going to a lawyer and so that you know what you need to cover in any letter to a lawyer asking for assistance.

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## General citizenship problems

Problems are usually experienced by people who are having difficulties in getting a first Identity Document (ID). Very often it is because their citizenship is being questioned by the Department of Home Affairs. ID books are only issued to citizens and to those non-citizens who have been given a permit to stay permanently in South Africa. If the person does not have a birth certificate or good proof of being born in South Africa, they will be asked to bring all sorts of information about their parents, their schooling and so on.

### WARNING

***Anyone giving advice must be very careful when dealing with citizenship problems. IF A MISTAKE IS MADE, IT MAY MEAN THAT A CLIENT'S CASE IS RUINED AND CANNOT BE PUT RIGHT.***

Advice-givers can assist a person to collect all the right proofs and documents but should then refer the case to a Law Clinic or public interest law firm such as the Legal Resources Centre, before doing anything else.

## South Africa's citizenship law

There are three ways in which a person can be a citizen:

- By *birth*
- By *descent*
- By *naturalisation*

Citizenship by birth and descent are legal rights for anyone who can prove the facts of birth and parentage.

Citizenship by naturalisation is not a legal right. It can be granted or refused by the Minister of Home Affairs. According to the *Eighth Amended Act* of the Regulations in terms of the *South African Citizenship Act* (1995) that came into operation on 1 April 2003, a small fee may be applicable for a Certificate or written confirmation of South African citizenship.

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### Citizenship by birth

A person has to prove the **place** where they were born and the **date of birth**. The place must be in South Africa. Proving a birth can be very difficult if there is no birth certificate or if the person was not born in a hospital or clinic. The Department of Home Affairs is not easily satisfied if the only proof is affidavits so try to find other documents that can be attached to the affidavits. Documents that can help are:

- **Clinic cards or school reports**
- An **affidavit from the chief** of the area where the child was born or from another respected person in the community who has known the family for a long time and knows the child was born there
- An **affidavit from the owner of the property** where the child was born
- An **affidavit from the mother's employer** at the time of the birth
- An **affidavit from the person's older sister or brother** who already has an ID and is accepted as a South African citizen
- An affidavit from **people who helped the mother at the birth** or who were **neighbours at the time of the birth**

### ONE PARENT IS A SOUTH AFRICAN, AND THE OTHER PARENT IS A FOREIGN NATIONAL

In terms of the *South African Citizenship Act* (No. 88 of 1995), a child born in South

Africa to parents where one was either a South African citizen or a South African permanent residence holder at the time of the child's birth and the other parent is a foreign national, will be a South African citizen by birth in the case of births from 6th October 1995 when the Act came into operation.

#### **NOT BORN IN SOUTH AFRICA: BORN OF A SOUTH AFRICAN PARENT**

The requirements are:

- Proof of date and place of birth. (Full, unabridged certificate)
- Citizen status of parent/s at time of birth
- ID of South African parent
- Proof of birth registration

#### **BOTH PARENTS ARE FOREIGN NATIONALS**

A child who is born in South Africa to parents who are foreign nationals can apply for citizenship at the age of 18 years.

#### **ADOPTED CHILD**

Foreign children who are born in South Africa and legally adopted by a South African citizen are governed in terms of the *Children's Act of 38 of 2005* and their birth is registered in South Africa. This means they will have citizenship of South Africa by birth. (See pg 88: *Citizenship Checklists*)

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### **Citizenship by descent (not born in South Africa)**

If you were born outside of South Africa to a South African citizen(s) or were adopted by a South African citizen in terms of the *Children's Act, 2005*, and your birth was registered under the *Births and Deaths Registration Act, 1992*, you can apply for citizenship by descent by submitting the following documents:

- Form DHA-24 to register your birth in terms of the *Births and Deaths Registration Act, 1992*. In the event you were born out of wedlock, both parents must sign the birth registration Form BI-24 to confirm paternity
- Forms DHA-529 (completed by yourself and your South African parents)
- Your foreign, unabridged birth certificate
- Your and your parent's marriage certificate (if applicable) and copies thereof
- If 15 years and older, an application for an identity document (DHA-9) with two identity document photographs

- Proof of your South African parent(s) foreign citizenship (if they have acquired such) and copies thereof
  - Proof of identity of your South African parent(s)
  - If you were adopted by a South African citizen, a copy of the adoption order
- 

## **Citizenship by naturalisation**

Naturalisation is the granting of citizenship to someone who has come to South Africa from abroad and stayed in this country for some time.

If a person is a citizen of another country but wants South African citizenship, they can apply to the Minister of Home Affairs for citizenship. According to Regulations in terms of the *South African Citizenship Act (1995)*, a fee may be applicable.

These are the conditions that the person must fulfil when applying for citizenship:

- Must be over the age of 21
- Must have a permanent residence permit to live in South Africa
- Must have lived in South Africa as a permanent resident for at least one year of ordinary residence immediately before the application for naturalisation
- After acquiring permanent residency, have an additional 4 years of physical residence in the country during the 8 years before the naturalisation. This does not include the one year mentioned above
- Must be able to communicate in one of South Africa's official languages
- Must be of good character
- Must be knowledgeable of the responsibilities of being a South African citizen and
- If married to a South African spouse, must have two years of permanent residence and two years of marriage to the South African spouse before submitting the application

But, this application for citizenship can be refused by the Minister even if the person seems to fulfil all the conditions. It is regarded as a privilege, not a right.

---

## **How can a person lose South African citizenship?**

A person can lose South African citizenship by:

- Renouncing the South African citizenship voluntarily
- Serving in the armed forces of another country while that country is at war with South Africa



- If the certificate of naturalisation was obtained using fraud or false representation
- If the certificate was issued in conflict with the provisions of the Act
- In the case of South African dual citizenship, the citizen has been sentenced to imprisonment for 12 months or more
- If the minister is satisfied that it is in the public's interest that such a citizen shall cease to be a South African citizen

#### NOTE

*Anyone who complains that their South African citizenship has been taken away MUST be referred to an attorney.*

## Resumption of citizenship

You may apply to have your South African citizenship reinstated if you are a former citizen by birth or descent and you have returned to South Africa permanently or are living in South Africa permanently.

Former citizens by naturalisation must re-apply for permanent residence or apply for exemption thereof before they can be considered for resumption.

To apply for resumption, you need to:

- Complete Forms DHA-175 and DHA-52
- Complete the application for identity document Form DHA-9
- Submit two identity document photographs that comply with the passport and ID photograph specifications
- Submit proof that you live in South Africa permanently (e.g. a municipal account) and a copy thereof
- Submit your marriage certificate (if applicable) and a copy thereof
- Pay the prescribed fee

## Dual citizenship

South African citizens can have citizenship in other countries, provided individuals comply with certain procedures. In terms of the *South African Citizenship Amendment Act of 2004* (No. 17 of 2004), an adult South African citizen who has dual citizenship or nationality can

freely use their foreign passport outside South Africa. However, they must use their South African passport to depart from or enter South Africa.

Anyone over 18 seeking dual citizenship must first apply to retain their South African nationality.

According to the *South African Citizenship Amendment Act*, a citizen is guilty of an offence and is liable to a fine or imprisonment if they:

- Enter or depart from the Republic by making use of the passport of another country
- While in the Republic, they make use of their citizenship from another country to gain an advantage or avoid duty

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## **Permanent residence through the first step of kinship**

A person can apply for permanent residence through a first step of kinship (family), for instance, where the applicant is the father of a child born in South Africa and whose mother is a South African citizen. This application for permanent residence can also be made through the holder of a permanent resident's permit who is in the first step of kinship. However, a foreigner cannot apply for permanent residence through a holder who obtained their permanent residence status through a first step of kinship.

### **EXAMPLES**

#### **APPLYING FOR CITIZENSHIP WITH A PERMANENT RESIDENCE PERMIT**

*A foreign national came into the Republic with an asylum-seeking permit and applied for status as a refugee, which was granted for two years. After two years, she applied for a permanent residence permit. If she stays for at least five years further, she can then apply for naturalisation.*

#### **APPLYING FOR PERMANENT RESIDENCE THROUGH A RELATIVE'S PERMIT**

*If a foreigner has married a South African citizen or permanent resident, they can apply for a Relative's Permit from their country of origin. Once in South Africa, they can apply to become a permanent resident. If the person is indeed a member of the immediate family and can satisfy the prescribed conditions, then the person can apply for permanent residency based on the first step of kinship.*

#### **APPLYING FOR PERMANENT RESIDENCE STATUS THROUGH A CHILD BORN IN SOUTH AFRICA (FIRST STEP OF KINSHIP)**

*A person who had applied for an Asylum Seeker's Permit and whose permit is going to expire wants to extend the permit. He has a relationship with a South African woman and*

is the father of two children with her. The two children will be of South African birth due to their mother's citizenship. He wants to apply for his Asylum Seeker's Permit to be renewed. The person is advised to apply directly for permanent residence status based on the first step of kinship through his two children. If his name is on the birth certificate, then he could present the birth certificate as proof of kinship. However, if the biological father's name is not disclosed, then he would need to make a late application for an unabridged certificate.

**NOTE:** In the case of a couple who are not married, the particulars of the father will only be evident on the unabridged birth certificate if the father's name was put down at the time of registration of the birth. If it is not recorded then a new application would need to be made to amend the birth certificate.

## Immigrants and migrants

### Laws governing foreign nationals

Some people come to South Africa for the purpose of work, and they are called immigrants and migrants. Others are here to seek asylum and refugee status. (*See: Asylum seekers and refugees*).

The *Immigration Act* (No. 13 of 2002) clearly states all applicants must present themselves to conduct the biometrics capturing that is required, namely a photograph and fingerprints being taken. A third party cannot apply on your behalf.

The *Immigration Act* and amendments to the Act deal with immigration and migration.

It regulates the admission of people to South Africa and their right to live and work here. The Act uses a licensing fee to manage the process of allowing foreigners to work and live in South Africa. It also regulates the movement of migrant workers in certain sectors, such as mining and agricultural work.

Applications for general work visas will require the following:

- A certificate from the Department of Employment and Labour confirming that despite a diligent search, the prospective employer has been unable to find a suitable South African or permanent residence holder to fill the position. If enforced, we anticipate a longer processing time will occur due to the added step in the already long process
- The applicant must prove that they have the necessary skills and qualifications in line with the job offer

- That the benefits offered are not inferior to the average salary of a South African citizen or permanent resident holding similar positions
  - A South African Qualifications Authority (SAQA) certificate is obtained and submitted. This is an evaluation of foreign education according to South African standards.
- 

## **Rights of non-citizens**

Remember that there is no 'right' for a non-South African to be given a permit to come to South Africa or to live and work here. It is always permission that may be granted or refused. However, anyone who applies for permission has the right to **administrative justice**. This means they have the right to be given reasons, in writing, why permission was not given. (See *Just Administrative Action*)

If a person is granted permission to live in South Africa **permanently**, they are entitled to most of the rights that apply to 'everyone' in the Bill of Rights.

If they are given permission to remain in South Africa on a **temporary basis**, such as a work permit, they are protected by some but not all of the rights. It will be many years before the courts have made enough rulings in individual cases to give us certainty as to what rights protect such temporary residents.

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## **Legal entry and staying in South Africa**

The *Immigration Act* says that every person who is not a South African citizen and who wants to come to South Africa must come in through a legal 'port of entry.' That means a border crossing by road or railway, or an airport, or a seaport where there is proper border control with immigration officials and police persons as well as customs officials. This is applicable for entering and departing the Republic. People who enter otherwise are illegally present in the country, and if they are found, they will be deported.

To enter South Africa legally, a person must have a valid passport from their country or a certificate applied for and issued by the Department of Home Affairs. Such persons must also have some kind of permit to enter South Africa. If this is not the case, their passport must be valid for not less than 30 days after the expiry of their intended stay. There are two kinds of permits: permanent residence/immigration permits and temporary residence permits (legislation makes provision for many different types of temporary residence permits).

## PERMANENT RESIDENCE

This permit allows a person to live permanently in South Africa while remaining a citizen of another country. According to the *Immigration Amendment Act*, this permit can be issued on condition that the holder is **not prohibited** (because of disease, outstanding conviction, previous deportation, association with terrorism or possession of fraudulent permits/passport) and **not undesirable** (declared incompetent, unrehabilitated insolvent, fugitive from justice or previous criminal convictions). In some instances such as in the instance of a scarce skill, a person who wants such a permit should **apply before coming to South Africa**. Sometimes, a person who is here on a temporary work permit will be allowed to apply for an immigration permit while they are already here. The other permits that they are on must still be valid.

There are four ways to obtain a permanent residence permit. If the person:

- Has been the holder of a work permit for five years and has received an offer for permanent employment
- Has been the spouse of a South African citizen or permanent resident for 5 years
- Is a child under the age of 21 years and born of a permanent resident
- Is a child of a South African citizen

The application forms are available at any South African embassy or consulate or directly from the Department of Home Affairs in Pretoria.

A fee is charged on application for a permanent residence. Contact the local Department of Home Affairs office to confirm the fee amount.

The following documents (where applicable) must be submitted with the application:

- A full set of fingerprints
- Marriage certificate/proof of spousal relationship, if applicable
- Divorce decree/proof of legal separation, if applicable
- Proof of custody/maintenance, if applicable
- Death certificate in respect of a late spouse, if applicable
- Consent of parents in respect of minors, if applicable
- Proof of judicial adoption, if applicable
- Police clearance certificates in respect of all countries in which you resided for a period of one year or longer since your 18th birthday
- A valid temporary residence permit if you are already residing in South Africa

When the application is received by Home Affairs, it is sent to a regional committee of the Immigrants Selection Board in the province where the applicant wishes to

live. The members of these regional committees and of the Board as a whole are not officials of any government department but are independent individuals. The committee will investigate the application.

The applicant must be:

- Of good character
- A 'desirable inhabitant' of South Africa
- Not likely to take a job for which there are enough South Africans available

The committee will give special consideration to the following applications, but there is still no 'right' to be granted the permit:

- Someone who is an **aged or destitute or disabled dependant** of a permanent resident provided that the permanent resident concerned has enough money to support the dependants
- The **husband or wife of a South African citizen or a permanent resident**

The Constitutional Court has said South Africans have a right to live in the country that they were born in with the partner of their choice. This means the government cannot refuse to give immigration permits to foreign-born spouses (husbands or wives) of South African citizens.

In terms of the 2014 amendments to the *Immigration Act*, foreign spouses in possession of a visitor visa could not change their status while they were still in South Africa. This meant that if they wanted to apply for a change of status after entering South Africa on a short-term visa, they would have to return to their home country to make the application and wait there until they got the relevant visa. This provision also applied to minor children having to return to their country of origin to make the application.

This legislation was challenged in the Constitutional Court, and in 2019, the Court ruled that foreign spouses and minor children of South African citizens or permanent residents who had visitor visas did not have to return to their home country to apply for their long-term visa but could do this directly in South Africa. This means that the foreign spouse of a South African citizen or permanent resident permit holder may now apply for a spousal visa in South Africa as long as they have a valid visa.

The Court has also said that the Department of Home Affairs may not refuse to issue work permits to foreign-born spouses of South African citizens unless they have a very good reason. Therefore spouses and dependants of South African citizens do not pay for an immigration application (Permanent Residence). People who have entered into a civil union in terms of the Civil Union Act, life partners in common law or gay relationships should receive the same treatment as married applicants.

Because they don't have marriage certificates, they have to supply affidavits stating they are life partners with their applications.

If the committee grants the permit, it may make it a condition that the person works and lives in the province concerned for at least 12 months.

If the permit is refused, the applicant may ask the Central Board to review the provincial committee's decision, but it does not have to. Legal advice is necessary to see if there can be any court challenge to the decision.

Withdrawal of a permanent residence permit can take place in circumstances including the following:

- If convicted of any listed offences
- Has been absent from the republic for more than three years unless exempted
- Has not taken up residence in the Republic within one year of the issuance

## **TEMPORARY RESIDENCE PERMIT**

A temporary residence permit allows a person to stay in South Africa for a limited time.

A person who wants such a permit should **apply before coming to South Africa**. Application forms are available at any South African embassy or consulate or directly from the Department of Home Affairs in Pretoria. An application fee will be charged. If the permit is refused, there is no review procedure.

There are many different kinds of temporary permits that can be applied for. These are described in the *Immigration Act, Sections 11 to 23*:

### **VISITOR'S VISA OR TOURIST VISA**

This is the easiest permit to get. These visitor's permits cannot be changed to any other kind of temporary permit. South Africa has visa agreements with certain countries, like the United Kingdom or the United States, which allow residents of these countries to just arrive at South Africa's borders and ask for a visitor's permit. The visitor's permit is granted for a period of up to 3 months. It may be issued for a longer period for visitors who have financial security and are engaged in specific activities such as research or charitable work.

### **DIPLOMATIC VISA**

This is issued to an ambassador, minister of a foreign state, career diplomat, or consular officer.

**STUDY VISA**

This is for a foreigner wishing to study for a period longer than 3 months and who can satisfy prescribed conditions.

**TREATY VISA**

This is issued to a foreigner conducting activities in South Africa in terms of an international agreement to which South Africa is a party.

**BUSINESS VISA**

This is issued to a foreigner who is purchasing, investing in, or establishing a business in South Africa. It can also be granted to members of such foreigner's immediate family. Prescribed financial contributions apply.

**CREW VISA**

This is issued to a foreigner who is a member of the crew of a ship. The crew member has to remain in a predetermined area in terms of this permit.

**MEDICAL TREATMENT VISA**

This is issued to a foreigner who intends to receive treatment in South Africa for longer than three months.

**RELATIVES VISA**

This is issued to the immediate family of a citizen or resident and is issued for a fixed two-year period, which can be extended. It requires a South African relative to show they can financially support the foreign relative over the two-year period. This visa does not allow the foreign relative to work in South Africa.

**WORK VISA**

This is very difficult to get unless the employer can prove that every effort has been made to find a South African to fill the position.

**Critical Skills Work Visa (CSWV)**

The CSWV is a permit issued to applicants who have exceptional skills or qualifications that are scarce in South Africa. It replaces the Exceptional Skills and Quota Work visas.

Applicants for a CSWV must complete the Department of Home Affairs online form. It cannot be submitted by hand. Go to the



Department of Home Affairs website: [www.dha.gov.za](http://www.dha.gov.za) for a list of the requirements for a CSWV.

In 2022, a new Critical Skills List was published and the visa is issued in terms of this List. The list looks at occupations that are in high demand and those that are scarce, according to the Department of Higher Education and Training (DHET).

An offer of employment is not required when you apply for a CSWV but you will only be issued with a visa for one year to allow you to find employment within your Critical Skills category. You immediately qualify for permanent residency once you have been offered permanent employment in an occupation that appears on the Critical Skills List.

The CSWV is valid for up to five years, and it can be renewed in South Africa. The visa holder's spouse and dependent children can also be issued with a visa that is valid for the same period as the CSWV.

Employees who have been holding a Quota Work Permit are allowed to continue using this visa until it has expired. After this, they need to apply for a South African work permit or Critical Skills Work Visa. They can do this in South Africa.

### **General Work Permit**

This is only valid for the duration of the contract of employment, and certification of continued employment needs to be submitted annually.

### **CORPORATE PERMIT**

A 'corporate permit' is applied for by a 'corporate applicant' (an employer) and permits the employer to employ foreigners for a documented purpose and for a specified period.

The employer who is applying for a corporate permit MUST prove that they have previously searched for workers in South Africa and were unsuccessful in finding the required amount of workers to receive the permit.

*Unskilled workers* will need temporary residence permits to enter the country under a corporate permit.

*Skilled workers* will need to apply for General Work Permits under a Corporate Permit.

## **RETIRED PERSON'S VISA**

This is issued to a foreigner who wishes to retire in the Republic of South Africa, provided they have proof of a pension from their country of origin or a minimum prescribed net worth. This is issued for 4 years and can be renewed.

## **EXCHANGE PERMIT**

This is only issued to foreigners not older than 25 years who wish to participate in cultural, economic or social exchange programmes.

## **EXEMPTION PERMITS - NATIONALS OF ZIMBABWE AND LESOTHO**

The Minister of Home Affairs created Exemption Permits to allow asylum seekers from Zimbabwe and Lesotho temporary entry for business, study or work. Initially, the Department set the ZEP status to expire in December 2022 but has extended this deadline and has published new policies regarding Zimbabwe Exemption Permits (ZEPs) and Lesotho Exemption Permits (LEPs) mostly to do with their expiration dates and application methods.

### ***Automatic extensions***

Nationals of Zimbabwe who were granted Zimbabwe Exemption Permits (ZEPs) in 2009 and nationals of Lesotho who were issued Lesotho Exemption Permits (LEPs) in 2019 will have the validity of their Exemption Permits automatically extended until December 31, 2024. These nationals now benefit from an automatic extension of their immigration status, which will save costs and time linked to extending this status.

### ***Initial ZEP and LEP applicants applying after November 29, 2023***

Initial LEP and ZEP applicants who applied for these permits on or after November 29, 2023, will automatically be granted a new validity period ending November 29, 2025. Those people applying for initial ZEPs and LEPs can now apply through the VFS Global online portal [https://www.vfsglobal.com/ZEP/SouthAfrica/zimbabwean\\_special\\_exemption.html](https://www.vfsglobal.com/ZEP/SouthAfrica/zimbabwean_special_exemption.html). Previously, they could only apply in person at the Department of Home Affairs. This will result in an easier and faster application process for these applicants.

Exemption permit holders are allowed to stay, work, seek employment opportunities and conduct business in South Africa during the validity of the exemption permit.

Exemption permit holders are not allowed to apply for permanent residence or change their immigration status in South Africa during the validity of the Exemption Permit.

It is not certain whether there will be another extension of Exemption Permits after 31 December 2024 for current LEP and ZEP holders and after 29 November 2025 for new LEP and ZEP applicants.

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## **Asylum seekers and refugees**

The *Refugees Act* (No 130 of 1998) says that South Africa cannot refuse to allow a foreigner into the country or force them to return to their own country if in their own country:

- They would be persecuted because of their race, religion, nationality, or political opinion because they belong to a certain social group, for example, because of sexual orientation and/or
- Their lives would be in danger because of a war or serious disruption of public order.

Some of the people from other countries who are among us are 'asylum seekers' – they are people who have fled from their own countries because of political conflict or war. They are asking for refugee status in South Africa so that they can have some protection, while they wait for the time when it is safe for them to go home again. The *Refugees Act* of 1998 and regulations apply to refugees living in South Africa.

### **DEFINITIONS OF ASYLUM SEEKERS AND REFUGEES**

A refugee is a person from another country who has fled to South Africa to escape war or persecution and who has been granted refugee status under the *Refugee Act*, No. 130 of 1998.

An asylum seeker is a person from another country who has fled to South Africa to escape war or extreme violence and who is formally seeking refugee status but has not yet been granted it.

An undocumented foreign national is a person from another country who has entered South Africa and who is in the country illegally because they have not engaged with any formal processes to legalise their residence – or they have not engaged successfully. The person is undocumented in South Africa, however they may have documentation in their country of origin.

If a person or their dependants fall into one of these categories, then they could be regarded as refugees. But, a person does not qualify to be a refugee if they have committed a serious non-political crime. People who are fleeing from economic

hardship (no employment) or natural disasters (like floods or earthquakes) are not recognised as refugees in terms of the *Refugees Act*.

## **APPLYING FOR ASYLUM**

Where the person seeking asylum enters South Africa, they will be granted a transit permit valid for 14 days in terms of the *Immigration Act*. A person who wants to apply for asylum must go to the refugee reception office during this time to submit an eligibility determination form (Form BI-1590).

You have the right to be assisted in English when making an application. Once you have made an application for asylum you will receive an asylum seeker permit. This is often referred to as a Section 22 permit. If you have been issued with this permit, then any other permit issued under the *Immigration Act* falls away.

The asylum seeker permit can be extended from time to time and will be valid for up to 6 months, after which it can be renewed. The government can withdraw the asylum seeker permit (Section 22) if:

- The applicant goes against any of the conditions on the permit
- They find that the application is not based on the truth
- The application for asylum has been rejected

If a permit has been withdrawn, the person seeking asylum can be arrested and detained until their application for asylum has been finalised.

When the government is deciding on an application for asylum they must explain the procedures to the person and tell them what their rights and duties are.

The Refugees Act says asylum seekers are not allowed to work or study. The South African Human Rights Commission challenged the Refugees Act, which states that asylum seekers are not allowed to work or study. As a result, the Department has instructed all Refugee Reception Offices to endorse the Section 22 permits allowing asylum seekers to work or study. (*See: Resources pg 1060 for names of organisations that will assist with refugee and asylum problems*)

## **THE REFUGEES AMENDMENT ACT (NO. 17 OF 2017)**

The *Refugees Amendment Act* was signed into law on 14 December 2017, but it can only be properly implemented once the Draft Regulations are finalised. These are some of the main focus points of the Act:

## **APPLYING FOR ASYLUM**

The *Refugees Amendment Act* requires an asylum seeker to report to a Refugee Reception Office no later than five days after arriving in South Africa – or they can be excluded from refugee status. Those without an ‘asylum transit visa’ will be interviewed by an immigration officer to determine whether they have ‘valid reasons’ or not. Those who’ve entered ‘illegally’ risk being excluded from applying for asylum. All existing dependents must be declared upon applying for asylum.

## **REFUGEE RECEPTION OFFICES**

Under the *Refugees Amendment Act*, the Director-General of Home Affairs would be able to establish as many Refugee Reception Offices as they regard as necessary – ‘notwithstanding the provisions of any other law’. They would also be able to direct any category of asylum seekers to report to any ‘place specially designated’ when applying for asylum, implying something other than a Refugee Reception Office.

## **ABILITY TO WORK AND STUDY**

Under the *Refugees Amendment Act*, asylum seekers would not have an automatic ability to work or study. The right to work or study would have to be ‘endorsed’ on an asylum visa following an assessment process to determine whether an asylum seeker can support themselves in any way.

## **EXCLUSION FROM REFUGEE STATUS**

If implemented, the *Refugees Amendment Act* would expand the reasons why an asylum seeker could be excluded from refugee status. This would include committing a Schedule 2 crime, entering illegally into South Africa, or an offence related to fraudulent documentation. It would also include those who are fugitives from justice in countries ‘where the rule of law is upheld by a recognised judiciary’, and those who do not apply for asylum within five days of entering South Africa.

## **ABANDONING ASYLUM CLAIMS**

Under the *Refugees Amendment Act*, an asylum claim will be considered ‘abandoned’ if an asylum seeker does not report to a Refugee Reception Office thirty days or more after the expiry of their asylum permit. Discretion is allowed but only if the asylum seeker can prove that they had ‘compelling reasons’ for having an expired permit. These reasons must be provided to the Standing Committee for Refugee Affairs.

## **CHANGES TO THE APPEAL SYSTEM**

The *Refugees Amendment Act* will create the Refugee Appeals Authority, which allows for one member to make a decision (rather than the current quorum, which is three members) and for more flexible appointments of staff and Refugee Appeal Authority members.

## **WITHDRAWING REFUGEE STATUS**

The *Refugees Amendment Act* would expand the reasons for which a refugee status could be withdrawn. Several actions could result in the withdrawal of refugee status – including a refugee seeking services from the consulate of their country of origin. The Act would allow the Minister of Home Affairs to announce a withdrawal of refugee status for a whole category of refugees (or an individual).

## **PERMANENT RESIDENCY**

The *Refugees Amendment Act* would double the amount of time a refugee has to reside in the country before being allowed to apply for permanent residency. This application, which involves applying to be recognised as an 'indefinite refugee', will only be possible for those who've been granted refugee status for ten years, which is double the current requirement of 5 years.

## **REFUSING AN APPLICATION FOR ASYLUM**

If an application for asylum is rejected, the person must be given the reasons in writing within 5 days of the refusal. If asylum is refused on grounds that the application is 'manifestly unfounded, fraudulent or abusive', the Standing Committee for Refugees will review the decision to refuse asylum. Such a case does not go to the Appeal Board.

An asylum seeker can lodge an appeal with the Appeal Board once they have been told that the application has been refused. The applicant must be allowed to bring a legal representative to the Appeal Board hearing if they request this.

## **RIGHTS OF ASYLUM SEEKERS**

An asylum seeker:

- Has the right to healthcare and access to public healthcare services
- Has the right to look for work. If employed, the *Basic Conditions of Employment Act* will apply, and the person must be paid a minimum wage

- Cannot be refused access to education. As a holder of either a Section 22 or a Section 24 permit, a child is entitled to access to education at public schools

### **APPLYING FOR A REFUGEE PERMIT (SECTION 24)**

Applicants will be interviewed for their refugee status application. They may bring witnesses or a person who can speak English to assist them in telling their story. They must also bring supporting documents such as:

- Birth Certificates
- Photographs
- Personal records
- Research was done about conditions in their home country, including newspaper articles

They will be notified about the outcome of their application within 180 days.

### **WHAT HAPPENS IF AN APPLICATION FOR REFUGEE STATUS IS DECLINED?**

The person will be given 30 days to submit an appeal to the Refugee Reception Office or to leave the country. In the appeal, the person must state reasons why they should not go back to their home country.

A person can appeal on the basis that:

- The correct procedure for processing the application was not followed
- The facts on the application were not taken into consideration
- The person who interviewed him or her was biased

### **WHAT HAPPENS IF THE APPLICATION FOR REFUGEE STATUS IS APPROVED?**

- If the application is successful, the person will be granted refugee status and a Section 24 Permit that is valid for two years
- They will immediately be issued with a Refugee ID in terms of Section 30 of the Refugee Act
- This Section 24 Permit must be renewed at the Refugee Reception Office 90 days before the expiry date

### **RIGHTS AND DUTIES OF REFUGEES**

A refugee:

- Has all the rights contained in the Bill of Rights, except rights specifically reserved for citizens, for example, the right to vote

- Can apply for an immigration permit in terms of the *Immigration Aliens Control Act* after living in South Africa for 5 years after the date that they were given asylum
- Can get an identity document and passport
- Can look for work, and the *Basic Conditions of Employment Act* applies if employed
- Can use the basic health care services and primary education facilities
- May apply for social assistance grants, mainly the Disability Grant and Foster Care Grant (*See pg 463: Social grants*)

If you would like to view a sample of Form BI-1590 'Eligibility Determination Form for Asylum Seekers (for Sections 22 and 24)', you can use the following link: <https://www.passport2000.com/files/BI-1590.pdf>

## Checklists

### General advice on citizenship

As an advice-giver, you must be very careful when dealing with citizenship problems. If a mistake is made, it may mean that a client's case is ruined and cannot be put right. You can help people to collect all the right proofs and documents, but you should then refer the case to a Law Clinic, or public interest law firm.

Remember to check a person's story as far as possible in case they are using false documents to get citizenship illegally.

Ask the person the following questions:

- Are you a citizen of another country who wants to apply for South African citizenship?
- Are you a South African who has lost your citizenship?
- What was the reason for refusing to issue you with an identity document or birth certificate?

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### Born in South Africa

#### PROOF OF BIRTHPLACE AND DATE OF BIRTH

1. Have you got a birth certificate?



2. If you haven't got a birth certificate, can you find at least two or more of the following documents?
- The record of your birth from the hospital or clinic where you were born
  - Your baptismal certificate
  - Clinic cards from when you were a baby
  - A letter from the chief in the area in which you were born
  - A letter from the owner of the farm where you were born
  - A letter from your mother's employer at the time of your birth
  - A letter from any midwife who helped your mother at the birth
  - Affidavits from the people who helped your mother at the time of your birth
  - Affidavits from your elder brothers or sisters who have IDs and are recognised as South African citizens
  - Your primary school records or a letter from the school principal
  - A house permit on which your name is written if your family lived in an urban area

#### **BORN IN SOUTH AFRICA BEFORE 1949**

You have a right to South African citizenship, regardless of your parents' status. But, the proof of the place and date of your birth must be very good. Affidavits from other people are not usually considered to be sufficient.

#### **BORN IN SOUTH AFRICA BETWEEN 1949 AND JUNE 1961**

You will also have to prove your father's position at the time of your birth:

- Is your father a South African citizen?
- Can you prove this with his identity document?
- If he is not a South African citizen:
  - Does he have an ID showing him to be a permanent resident in South Africa?
  - Does he have a passport for the country he came from?

You will need to try to find proof of his status at the time you were born. These might be:

- Old passports showing his registration for work or permission to be in South Africa
- The record from TEBA showing that he was a contract worker in the mines
- Any other paper showing that he was working legally in South Africa at the time you were born

## BORN IN SOUTH AFRICA AFTER JUNE 1961

1. Was either your mother or your father a South African citizen at the time you were born?
  2. Can you prove this with their Identity Document?
  3. Was either your mother or your father a permanent resident at the time you were born?
  4. Can you prove this with their Identity Document, permanent residence permit, or immigration permit in their passport?
- 

## Requirements for permanent residency

### THE MAIN APPLICANT IS THE RELATIVE OF A CITIZEN OR RESIDENT WITHIN THE FIRST STEP OF KINSHIP

This service applies to a prospective permanent resident who wishes to apply for a permanent residence permit on the basis of being a family member of a South African citizen or permanent resident within the first step of kinship. For the purpose of permanent residence, family members within the first step of kinship are prescribed as biological and judicially adopted children or adoptive parents and step-parents.

- **Fully completed application forms**
- **Photographs:** 2 recent colour passport-type photographs
- **Passport:** Valid original passport
- **Birth Certificate:** Unabridged birth Certificate
- **Medical Report:** The report must not be older than 6 months
- **Radiological reports:** All applicants 16 years and older (excluding pregnant women)
- **Police clearance certificate:** In respect of all countries of residence in excess of three months (Originals only) Only accepted if issued by the relevant police authority)
- **Marriage Certificate:** Unabridged certificate. Proof of registration of customary marriage. Documentary proof of cohabitation and the extent to which the related financial responsibilities are shared by the parties
- **Divorce Certificate:** Divorce decree(s) or proof of legal separation and all relevant court orders regarding custody & maintenance of children and previous spouse(s) (Required irrespective of whether or not the applicant has since re-married)

- **Education:** CV (Detailed curriculum vitae) - including highest educational, trade or professional certificates evaluated by the South African qualifications
- **Proof of kinship:** Relationship confined to biological or judicially adoptive parents, biological or judicially adopted children or a spouse
- **Proof of cohabitation:** Proof in the form of communal accounts or other documents reflecting cohabitation
- **Undertaking by citizen:** Undertaking from citizen/resident regarding financial, medical and emotional responsibility for the applicant. (Not applicable where the relative is the parent of a minor child of a South African citizen/resident)
- **Confirmation from citizen:** Confirmation that the South African citizen/permanent resident did not obtain residence in terms of Section 27(g) of the Act
- **Payment of the applicable fee**



## Democracy, government & public participation

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## Introduction

When people vote for direct representatives or political parties in elections (for government and any other institutions), they are voting for these representatives or parties to make laws and policies on their behalf and to ensure that these are carried out. This is one of the most important principles of democracy. The Constitution sets out the right to vote, participate in political parties and stand in elections, in Section 19.

Democracy also means that the people who have been elected are accountable in various ways to the people who voted for them. Citizens have a role to play in participating in government and governance processes on an ongoing basis to ensure that the people they vote for carry out their duties and obligations. They have a constitutional right to be involved in these processes in all spheres of government: national, provincial and local. To participate effectively in the decision-making and implementation processes, you need to know:

- The systems and structures of all spheres of government (and key public entities)
- How laws and policies are made in all spheres of government
- What the best opportunities are for public participation in all spheres of government
- Different methods of participating
- The rights of citizens
- The obstacles and challenges to effective participation in decision-making and implementation processes
- How to strategise collectively to highlight and address the needs of especially poor and vulnerable communities and individuals

This chapter looks at democracy and at public participation in a democracy.

## Democracy

Democracy is a way of governing a country. The most common definition of democracy is ‘rule by the people’. Citizens are allowed to choose public representatives to represent them in government. They do this in regular, free and fair elections. The public representatives run government on our behalf. They use our tax money to ensure that services are delivered.

However, the democratic practice of citizens doesn't end here. Democracy also means that the people who have been elected are accountable in various ways to the people who voted for them. They have to act and deliver on the promises they made during elections and should ensure the participation of local communities in setting plans and priorities.

All public representatives and officials must be open (transparent) and accountable in their actions and decisions.

When we vote, we give the government a mandate to pass and enforce laws on our behalf. In making laws the government has to follow the Constitution, and it uses the courts as well as the police to enforce the laws.

If the government becomes unpopular or doesn't do what it promised to do then people can vote for another party in the next election and vote the present government out of power. This is essentially how democracy works and why it can be an effective system of government.

The Constitution sets out the principles for how the public service should operate in section 195:

- A high standard of professional ethics must be promoted and maintained.
- Efficient, economic and effective use of resources must be promoted
- Public administration must be development-oriented
- Services must be provided impartially, fairly, equitably and without bias
- People's needs must be responded to, and the public must be encouraged to participate in policy-making
- Public administration must be accountable
- Transparency must be fostered by providing the public with timely, accessible and accurate information
- Good human-resource management and career-development practices, to maximise human potential, must be cultivated
- Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation

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## **The principles of democracy**

Democratic principles are ideas that most people believe are essential for a democracy to thrive. The most important principles of democracy are:



**Public participation:** People have a right and a duty to participate in government and in civil society. Public participation includes standing for elections, voting in elections, becoming informed, holding and attending community meetings, joining civil and/or political organisations, paying taxes, and protesting and petitioning.

**Equality:** All people should be treated equally and without discrimination and be given equal opportunities.

**Tolerance:** While the party representing the majority of people runs government, in a democracy, the rights of opposition or minority groups are also protected.

Government serves all the people equally. Everyone should be allowed to express their opinions and join the political, religious or civil groups of their choice.

**Accountability:** Government must be accountable to the people for its actions, including the laws that are passed and how these laws are implemented. Our taxes are used for government spending and all budgets and financial statements should be presented to parliament and be available to the public.

**Transparency:** Government must be open to the public about its actions. It must allow the public to give input before new laws are passed.

**Regular, free and fair elections:** Elections must happen in a free and fair way, without intimidation, corruption or threats to the public before or during the election. Elections should also be held regularly. For South Africa, these occur every five years.

**Accepting the results of elections:** When a political party loses an election, the party and its supporters must accept this result.

**Economic freedom:** People in a democracy should be allowed to have some kind of private ownership of property and business, they should be allowed to choose their own type of work and join labour unions.

**Controlling and preventing the abuse of power:** There should be ways to prevent government officials from abusing their powers. The courts should be independent, and they should have the power to:

- Act against government officials or bodies that commit an illegal or corrupt act.
- Allow for public participation and elections
- Check police abuse of power
- Intervene where corruption is exposed

**Human rights:** The human rights of individuals and groups are enshrined and protected in the Bill of Rights. The Bill of Rights includes a list of rights and freedoms that are guaranteed to all people in the country. All rights and freedoms need to be protected to prevent these from being violated. Section 7 of the Constitution defines what the Bill of Rights is:

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

**Multi-party system:** More than one political party must be allowed to participate in elections and play a role in government. Since the national and provincial elections in 2024 and in local government, independent candidates are also provided for.

**Rule of law:** The rule of law means laws rule above all else and that no one is above the law, including the parliament or president of the country. Everyone must obey the law and be held accountable if they break the law. The law must also be equally, fairly and consistently enforced. Laws are the rules made on our behalf by parliament. The judiciary acts as a referee and enforces the rule of law. They may judge any action by government, citizens, organisations or companies and will use the Constitution and laws to decide whether the action is legal or illegal.

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## **Electoral system and electing a government**

The Constitution gives everyone who is a citizen and 18 years or older the right to vote in elections.

The electoral system for the national assembly and provincial legislatures is the proportional representation system, and all citizens are entitled to vote if they are registered voters. Voters vote for a party or an independent candidate of their choice.

The local government electoral system is a mixture of proportional representation and constituency system.

South Africa holds national, provincial and local elections every five years, and the local government elections usually occur about two years after the national and provincial elections.

Having regular, free and fair elections is one of the cornerstones of democracy. This goes together with other important democratic principles such as the right to vote, to choose which party you want to belong to and the obligation to accept the results of an election.

There are different ways to elect representatives into government, including the system of proportional representation and the constituency-based system. The South African national and provincial elections are based on the system of proportional representation while the local government electoral system is partly based on proportional representation and partly constituency-based. In 2024, the Constitutional Court order that independents must be able to stand for national and provincial elections was implemented.

**CHANGES TO THE ELECTORAL ACT IN 2024**

In 2024, Amendments to the Electoral Act were passed by Parliament to accommodate independent candidates in Provincial Legislatures and Parliament. Three ballots were used, and parties received seats according to the percentage of the votes they won. Independents could also compete for a provincial seat or a regional to national-seat.

**PROPORTIONAL REPRESENTATION**

This means that parties get a certain number of seats in parliament according to the percentage of votes that they get in an election. So, for example, if your party gets 15% of all the votes in the country, then it gets 15% of the seats in parliament.

There are 400 seats in the national parliament. So, for every 1% of the vote, a party gets 4 seats. The example on the next page shows how seats are allocated for the top three parties that won seats in the 2014 election.

EXAMPLE: NATIONAL ELECTIONS 2014		
Party	% of the votes	Number of seats
African National Congress	62 %	247 seats
Democratic Alliance	22 %	89 seats
Economic Freedom Fighters	6 %	25 seats
Other small parties (together)	7 %	39 seats

## CONSTITUENCY-BASED ELECTIONS

According to this system, the country is divided into voting areas called constituencies. Each political party chooses one person to represent the party in each constituency. This person is the party's candidate. Independents can also stand without a party backing them. People in a constituency vote for the candidate of their choice. So, a person only goes to parliament if they get the most votes in that constituency. It is also called the “first past the post” system and is used for ward councillor elections in South Africa.

For national and provincial elections, there are no small constituencies. Each province is, in effect, a multi-member constituency.

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### Local government electoral system

The local government electoral system differs from the national and provincial electoral systems of pure proportional representation. Voters get three ballots – one for the local council (party names), one for a ward candidate (individual names) and one for the district council (party names). In the local council, half of all councillors come from wards where they are directly elected as individuals. The other half come from party lists and are elected according to a proportional list system. District councils are partially elected based on proportional representation, and partially appointed by the councils of local municipalities within the district.

In the eight metropolitan councils (the City of Johannesburg, the City of Tshwane, eThekweni, Ekurhuleni, Mangaung, Buffalo City, the City of Cape Town and Nelson Mandela Bay Municipality), voters get only two ballots, as there are no district councils.

## MUNICIPAL BY-ELECTIONS

By-elections take place within 90 days after a municipal ward council seat becomes vacant due to the death, expulsion or resignation of a ward councillor.

## Public participation

Public participation means that citizens should be able to interact with government on decisions that affect them. Democracy should not end with elections, government makes

thousands of decisions that need input from the people. For example, many organisations and individuals make representations to parliament in public hearings when new laws are discussed. At a local level, municipalities should consult people on housing developments and the use of public land.

Citizens have a right (and a duty) to have a say on how the government does its work. Citizens also pay taxes and have a right to know how this money is being spent. If people don't participate, the government may make decisions without hearing the opinions of the people and, as a result, will not be transparent and accountable for their actions. This can lead to the abuse of power. The Constitution says all spheres of government (national, provincial and local) have to make it easy for people to participate in government. Section 118 (1)(a)(b)(i) and (ii) of the Constitution deals with public access to and involvement in provincial legislatures, and Chapter 4 of *The Local Government Municipal Systems Act* is dedicated to community participation.

So we can see that public participation is an important part of democracy – and in particular for South Africa – because it makes the government:

- Open and accountable for its actions
- Act on its promises (usually made in election manifestos, policy and budget speeches of ministers, and the annual State of the Nation Address (by the president)

If you want to participate effectively, you need to be properly informed, which means:

- Knowing what is happening in your community and what the important issues are
- Understanding government budgets and available resources
- Knowing what is happening in your broader society
- Knowing what your legal rights are and where decisions will be made

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## **How can you participate and influence decision-making?**

Here is a list of ways that you can participate and influence decision-making:

- Vote in elections
- Participate in party politics
- Organise, support and hold public demonstrations and campaigns
- Petition local, provincial and national leaders
- Lobby decision-makers (e.g. a municipal councillor, mayor, speaker, member of parliament or senior government official, e.g. municipal manager, and participate in decision-making processes, such as public hearings or public consultation meetings)

- Engage with ward committees, intergovernmental meetings, budget, IDP and local consultative meetings at a local government level. Use these to hold local councillors accountable and participate in policy formulation and implementation planning
- Make written or verbal submissions to council committees (*See pg 142: Checklist: Making a written and verbal submission*)
- Print and distribute leaflets to the public
- Use local radio and TV stations or social media networks, e.g. WhatsApp, Facebook and X, to spread your message
- Refer complaints to appropriate institutions like the South African Human Rights Commission (SAHRC), Commission on Gender Equality, the Public Protector, and Independent Police Investigations Directorate (IPID) for police issues
- People can also lobby constituency representatives of statutory institutions, such as the National Economic Development and Labour Council (NEDLAC), South African National Aids Council (SANAC) and other structures that encourage public participation

Voting in elections and lobbying are two of the most important ways of participating in decision-making processes.

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## **Voting in elections**

The Constitution gives everyone who is 18 years or older the right to vote in secret in elections. The *Electoral Amendment Act* (No. 34 of 2003) says a person who is a South African citizen, has a bar-coded ID and is 16 years old can apply to register as a voter. Their name can only be placed on the voter's roll once they reach the age of 18 years.

### **NATIONAL AND PROVINCIAL ELECTIONS**

South Africa's national and provincial elections take place every five years.

Voters vote for a political party or an independent. The political party then gets a share of seats in parliament in direct proportion to the number of votes it got in the election. Each party then decides on members to fill the seats it has won. This is called a proportional representation (PR) voting system. Independents win a seat by getting the quota of votes needed for one seat.

Democratic national and provincial elections have taken place every five years starting in 1994.

Voters are registered to a voting district (VD) and appear on the voter's roll only at the voting station in that voting district. Special votes are allowed before elections for people who are travelling outside the country or voting district on election day or those who are disabled, infirm, elderly, or heavily pregnant. Prisoners are allowed to vote in national and provincial elections.

## **MUNICIPAL ELECTIONS**

Municipal elections take place every five years. A mixed or hybrid system of both the ward system (a constituency system) and the proportional representation (PR) system is used for municipal elections. The first democratic municipal elections took place in 1995/6, and the first municipal elections run by the IEC took place in 2000.

There are 3 types of Municipal Councils in South Africa:

1. Category A: Metropolitan Councils
2. Category B: Local Councils (LC)
3. Category C: District Councils (DC) (have executive and legislative powers in areas that include local municipalities)

For metropolitan municipalities, there are 2 types of elections and ballots:

1. Metropolitan Council ward ballot with individual's names to elect one ward councillor in each ward and
2. Metropolitan Council proportional representation ballot with party names

In all local municipalities other than metropolitan municipalities, there are 3 types of elections and ballots:

1. Local Council ward
2. Local Council proportional representation
3. District Council proportional representation

## **MUNICIPAL BY-ELECTIONS**

By-elections take place within 90 days after a municipal ward council seat becomes vacant due to the death, expulsion or resignation of a ward councillor.

## **SPECIAL VOTES: MUNICIPAL ELECTIONS**

A special vote allows a registered voter who can't vote at their voting station

on election day to apply to vote on special vote days before election day.

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## **Lobbying (campaigning, petitioning)**

Lobbying means trying to influence or persuade individuals or groups with decision-making powers, such as people who make policy or laws, to support a position you believe is right or to take certain action. Organisations and individuals can lobby to directly influence decisions being made in all spheres of government.

### **WHO CAN YOU LOBBY?**

In the work you and your organisation do, it is important to identify people whose cooperation or influence you need to help you with your work. These are usually decision-makers or key role-players. So, you lobby people who have the power to take action to support the needs and interests of those who do not have direct power and influence. Lobbying can be used to influence anyone with power, for example:

- Parents can lobby the school governing body to provide after-care at school
- Civics can lobby the police commissioner to have more police on duty at night
- HIV/AIDS activists and support organisations can lobby the president to provide affordable treatment for people who are HIV positive
- Civics can lobby local councillors to pass a by-law that says everyone should be given access to electricity
- Organisations can lobby members of parliamentary standing committees, cabinet ministers and heads of government departments to influence them in policy and law-making

The two main categories of decision-makers and role-players that you can target are people who support your cause and people who oppose you.

### **TIMING OF LOBBYING (CAMPAIGNS AND PETITIONS)**

Make sure you understand where, when and by whom a decision will be made. Find out what rights you have in terms of public participation.



## BUILDING GOOD RELATIONSHIPS WITH DECISION-MAKERS AND KEY ROLE-PLAYERS

One of the most important parts of lobbying is building relationships with people that you are planning to engage, in other words, decision-makers and key role-players

The stronger the ties of trust, mutual support and credibility between you and the person you are lobbying, the more effective your action will be.

These are some guidelines for building good relationships with key role-players:

- Provide useful, accurate, context-specific and truthful information:
- It is important for you and your organisation/network to understand and identify issues of protocol and to raise issues with the appropriate office first. For example, if there is a problem at a clinic, first raise this with the head of the clinic, then the area manager, then the provincial or district authority and finally with the MEC for Health, rather than the other way around. When making a submission to the municipal council, provincial legislature or parliament, it is protocol to take the issue to the relevant decision-making body to consider rather than going to the media first.
- It is important to identify the group/constituency you represent and to have affected persons and community representatives participate where possible in the submission/presentation
- Recognise what the person you are lobbying has done to benefit the community, so start with a positive and encouraging comment
- Offer to help with issues that they care about (so long as it doesn't conflict with your own interests), for example, helping to spread information
- Establish ways to work together in the future. Promote win-win solutions where the people you represent, as well as the decision-makers gain something positive
- Keep in regular contact, and don't be impatient if nothing happens immediately
- Follow up in writing with those you made a petition/submission to, thank them for their consideration, repeat what you have requested/called for and ask, if needed, when you can meet again
- Keep the community or interest groups informed of the latest developments
- Ensure that they own the lobbying strategy and can sustain it
- Keep the media informed about any changes or developments that may affect the issue

## EXAMPLE

*You want your municipality to test the drinking water of your community.*

*You believe a local factory has been pumping their waste into the water and it has been making people sick. You will have more chance of someone co-operating with you if you provide them with accurate information, for example, by showing them a record of the illnesses in the last month in the affected area (get these from a clinic or hospital) or providing evidence of the company dumping waste in the water.*

## TYPES OF LOBBYING

There are many different ways of lobbying, campaigning and petitioning. The different lobbying activities around an issue must be coordinated to make sure they have the greatest impact. It is important that strategic thinking precedes your action.

These strategies can broadly be categorised into 2 groups:

- Inside lobbying
- Outside lobbying

### INSIDE LOBBYING

Inside lobbying includes a mix of the following:

- Holding meetings with decision-makers, such as local council representatives and members of parliament for your area
- Providing information to role-players, committees and government officials
- Making submissions to committee meetings/public hearings
- Attending hearings where policy is discussed
- Negotiating with decision-makers and other lobby groups
- Writing formal letters stating your position
- Submitting petitions to relevant committees
- Having discussions with people in informal situations, for example, before or after meetings, during social occasions

### OUTSIDE LOBBYING

If inside lobbying is not effective, you should mobilise more support for your

issue through outside lobbying, for example:

- Speaking to the media, holding news conferences, visiting news editors, helping reporters with stories
- Building alliances with other organisations
- Public letter-writing campaigns
- Public campaigns such as rallies and demonstrations

## METHODS OF LOBBYING

The following is a summary of methods you can use for lobbying:

Even before you engage in lobbying it is critical to mobilise support for your position or issue. With modern technology, support can happen via social media sites such as Facebook and Twitter, though it is important to have a local core group engaging with decision-makers.

**MEETINGS:** Ask if you can have a face-to-face meeting to present your case. Visit the person in their office or invite them to attend a meeting in the community. Always state clearly why the meeting is important and give them an agenda and a list of possible outcomes from the meeting. Remember to say what is in it for the decision-maker, for example, *"This meeting will provide you with the opportunity to make direct contact with more than 100 people from the community and to hear their concerns on the issue"*, or *"We will publish your response on our Facebook page where we reach 15 000 people from this city."*

**WRITE LETTERS:** Letters, emails and sms messages are the easiest method to use to lobby but they are not always the most effective. Many people in positions of power have administrative staff who read their mail and sms messages and summarise them for them. It is always advisable to call a meeting with decision-makers, after writing a letter or sending a message.

The different activities around an issue must be coordinated to make sure they have the greatest impact. So, for example, civil society organisations worked together on the Right to Know Campaign from 2011 to 2014 to raise concerns about the Protection of Information Bill. They used inside and outside lobbying, campaigning and petitioning to delay the passing of this bill. Their work helped to improve the law and address strong concerns from various civil society organisations and the media.

**ASK FOR AN ON-SITE INSPECTION OR SURPRISE VISIT:** Invite decision-makers to come and make on-site inspections if appropriate. For example, get the person to

come and look at the condition of a school. Committees of parliament have scheduled site visits that can be used to arrange engagements with affected communities or organisations.

Elected officials and municipal officials are the closest to people. Visits and meetings can be arranged more easily with this sphere of government. For example, invite an official or councillor to explain the budget to a ward committee or organised group in your area.

**INFORMAL TALKS:** Talk informally to committee members and decision-makers during tea breaks, etc. Introduce yourself and share your opinions.

**PRIVATE MEETINGS:** Organise meetings with national and provincial ministers, mayors and their advisors, and local councillors to explain your position.

**PUBLIC MEETINGS:** Attend and observe parliamentary committee debates/local council meetings.

**PETITIONS:** Petitions can be used to show how much popular support your issue has. You can use a petition to get as many signatures as possible from people in the community, or you can get a smaller number of key individuals or organisations to sign a petition to support your submission.

**PUBLIC HEARINGS:** When a bill is tabled in parliament, public hearings are often held where the public can make their submissions to the parliamentary committee dealing with the issue. This is a key moment to get the policy or law changed.

**PHONE CALLS, SMS, FAXES & EMAILS:** Get as many people as possible to telephone the decision-maker. Also, use SMS, faxes and email, if possible. Try to contact influential and well-known people by telephone. If you cannot speak to the decision-maker, leave a clear message, for example, "*We are phoning to object to the council closing the local health clinics*".

**USE THE MEDIA:** Use radio, newspapers and TV to spread the word and get publicity for your story. It always helps to make individual contact with a reporter who is prepared to follow the issue through.

**MAKE SUBMISSIONS:** If formal submissions to committees are unsuccessful, you can also make the submission to an influential member, such as a parliamentary member or a member of a local council committee. You can make a submission to draw attention to an issue or to try and influence the policy and law-making process.

**USE THE LEGAL SYSTEM:** Take a case to court or to one of the human rights commissions set up under the Constitution to investigate claims of human rights abuses. This is usually the last resort when all avenues of lobbying have failed, where there has been a failure to address an issue for a long period, or where drastic intervention is needed. This is called public interest litigation. *(See next page: Example of lobbying)*

## EXAMPLE

*This example shows the lobbying role played by an NGO or civil society network during the process of amending The Choice on Termination of Pregnancy Act.*

### **February 2007**

*Women's health activists come together and develop a draft abortion policy proposal, which is submitted to the Department of Health and the ad hoc Select Committee on Abortion*

### **August 2007**

*NGOs mobilise the media and make their own submissions to the public hearings*

*NGOs mobilise public opinion by running community workshops on abortion reform.*

*NGOs form an alliance*

### **March 2008**

*The alliance of NGOs lobbies parliament through the distribution of pamphlets to parliamentarians and decision-makers and gives evidence to parliament in favour of abortion reform.*

### **May 2008**

*Alliance collects data from focus groups to assess community opinion on The Choice on Termination of Pregnancy Act. Research helps in providing improved abortion access for women.*

### **July 2008**

*Parliamentary hearing on implementation of the Act: Alliance mobilises support from other organisations to give input for the hearing*

## GUIDELINES TO EFFECTIVE LOBBYING

These are some practical tips on how to petition decision-makers and/or key role-players:

**ENGAGE & INTERVENE EARLY:** It is usually better to intervene as early as possible in the process of developing policy and laws. By the time an issue is being debated in

parliament, within a municipal council or being finalised in a government department, it is hard to get it changed significantly.

For this reason, it is important for your organisation to regularly check invitations to public hearings in newspapers, and in the media. There are dedicated websites and organisations that alert one to these developments. Examples include the Parliamentary Monitoring Group (PMG). At a local level, it is important to check local papers as regularly as possible.

**RESEARCH OR DATA COLLECTION:** When government publishes a draft strategy, policy paper, draft regulations or any form of discussion document, you should research the issue properly to be clear about it and, where necessary, collect evidence.

**IDENTIFY DECISION-MAKERS:** Analyse who has the power to make decisions on your issue and target your strategies in a very focused way at specific decision-makers. Remember, not everyone will agree with your position. Think how the role-player can benefit from agreeing with you and include this in your arguments.

Realise that your target audience may respond in three ways:

- People who support your position
- People who neither support your position nor oppose it and who can, therefore, be persuaded to support you (those who 'sit on the fence' or are undecided)
- People who are against you

For your cause/issue to be heard, every effort needs to be made to ensure that decision-makers thoroughly discuss your concerns and do not simply see you as an opponent.

Amongst those who support your cause, all must agree on the same way forward so that you do not confuse decision-makers. This requires time, patience and lots of communication.

**BE CLEAR ABOUT YOUR AGENDA AND GOALS:** Only use advocacy and lobbying that will address issues that have jointly been identified as core matters to improve the quality of life of the community or the interests of the group. Ensure that your arguments are tight and clear, and where possible, provide evidence to support your case.

Be clear about your issue and plan your own alternative or compromise position. Make sure you have thought through all the options. Know what it is that you want. For example, do you want a parliamentary committee to investigate why a government department has not done a certain job, are you asking for a law to be amended or a by-law or regulation to be scrapped?

This will form the basis of your submission to government, your media campaign, your representations to individual ministers or government officials and your networking with other organisations. It is important to -

- Know your issue (don't confuse by raising too many issues)
- Know your position
- Decide what you want to get out of the visit, for example, a commitment to vote for your issue, to provide information only
- Keep it simple
- Make recommendations to solve the situation rather than only describe the challenge or problem at length
- If it is a group visit, decide who will start the discussion and put your agenda on the table
- Seek endorsements from networks or organisations that support your position and or submission, and bring people from the affected community to also speak
- Only after engaging with the decision-makers share the entire submission with the media

**PROPOSE SOLUTIONS:** Propose to committee members or government officials a solution that can work. Avoid threats or aggressive language.

**PREPARE FOR RESISTANCE & OPPOSITION:** Analyse the opposition's position (to your issue) and develop counter-arguments. Often, arguments of affordability and resources are used to counter your submission. Make sure you have sufficient evidence to motivate why additional resources are required to meet your request/demands.

If additional resources are required or amendments to existing legislation are proposed, try to get professional advice on legal and cost issues.

**LISTEN WELL:** When making your submission:

- Look for opportunities to provide good information.
- Know your issue, but don't feel you have to have all the answers. Admit when you do not know something.

- Ask questions to get a better understanding.
- Share the opinions and concerns of other people in your community.
- Find out how much time you have been allocated for your submission or presentation – and aim to complete it in a shorter time. Often, programmes run late, or sudden changes are introduced.
- Take enough copies of your presentation for everyone present.
- Establish who will be presenting to the committee/decision-makers before or after you if your submission is part of public hearings.
- Make sure beforehand that the time, venue and date have not changed.
- Always assess afterward what worked well, what may require more work and what your future strategies are.

**NEVER USE BLACKMAIL:** Using blackmail, gifts or bribery to persuade someone to take a certain action is corruption and unethical behaviour, not lobbying.

**DON'T BE AGGRESSIVE:** Don't be argumentative or confrontational and don't get involved in mud-slinging. Be open to counter-arguments, but don't get stuck on them. Attack with correct facts, but avoid personal attacks or insulting slogans. Treat everyone with respect.

**BUILD, DON'T DAMAGE WORKING RELATIONSHIPS:** If the person has supported you in the past then acknowledge them and your appreciation of their support. If they haven't supported you in the past, they may well do so in the future, so don't turn them into a permanent enemy. Your response might stop them from becoming active opponents.

**GET COMMITMENT & SUPPORT:** Try and get a commitment from the person, for example, a written declaration or a public statement, if it is within their powers to do so. If you are unable to get a commitment and the conversation isn't going anywhere, thank the person and say that you would like to continue the discussion at another time.

**FOLLOW-UP:** After the meeting, if appropriate, send a thank-you note to all in attendance or to the chairperson of the committee. If commitments were made in the meeting, repeat your understanding of them. If staff members were present, thank them, and write to the administration too.

**LOBBY ALL TARGET GROUPS/ RELEVANT AUTHORITIES:** Don't only lobby one department or entity on an issue. Identify the target role-player's supporters, allies and opponents and include all of them. For example, an environmental health matter may require engagement with the provincial health department, the municipal



environment health department and the agency responsible for refuse collection, as a start. You should also lobby all political groups, not just the majority party.

**CONSOLIDATE & BUILD YOUR LOBBY GROUP:** Analyse which individuals and organisations can influence the decision-makers and/or role-players and try to mobilise them to support your issue. Never lobby alone. People with political power are usually more sensitive to lobbying action which represents their voters.

**BRIEF ALL ROLE-PLAYERS:** Keep other stakeholders informed about what is happening and the outcome of any lobbying action. Use meetings, regular emails, newsletters, SMS, WhatsApp, phone calls and other social media networks.

## Structures of national government and public participation in these structures

The different branches of government at national level provide different opportunities for public participation. The following section looks at the structures of national government and the possibilities for public participation within these structures.

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### Structures of national government

#### THE EXECUTIVE BRANCH

The executive branch is responsible for the day-to-day running of the country. It consists of the president, deputy president and cabinet, and they oversee the public service. Some of the functions of the executive are to:

- Initiate laws and policy
- Carry out laws passed by parliament
- Carry out policies
- Co-ordinate the functions of the government departments and administrators
- Provide direction to heads of government departments
- Plan, monitor and evaluate government programmes

## **KEY ROLE-PLAYERS AND STRUCTURES IN THE EXECUTIVE**

It is important to know what structures exist as they can be useful as a point of entry for your lobbying action.

The president, cabinet and deputy ministers are called the executive. The head of state is the president who leads the cabinet. The national assembly elects the president from among its members and leads the country following the Constitution and the law. The key role-players in the executive that may play a role in formulating policy or drafting law will be:

- The president
- The deputy president
- Ministers, directors general and other senior managers who are in charge of different government departments
- Inter-departmental committees. Often policy will cut across a number of ministries and departments. Inter-departmental committees are set up using representatives from different departments to deal with the policy as a whole and provide direction to directors general who head the public service. For example, in the case of delivery of water, this may involve the departments of water and sanitation, environmental affairs, human settlements, finance and cooperative government.

## **LEGISLATIVE BRANCH**

The functions of the legislative branch of government are to:

- Develop and pass laws
- Contribute to developing policy
- Act as a watchdog on the activities of government
- Pass budgets and get reports from departments

The legislature consists of the national parliament made up of different structures, for example, a National Assembly, National Council of Provinces (NCOP) and various parliamentary committees. These are the key structures that you can lobby in the legislature:

## **PARLIAMENTARY COMMITTEES**

The national parliament usually divides the members of parliament into small groups which focus on specific areas of governance. These smaller groups

are called parliamentary or portfolio committees. The main role of the portfolio committees is to:

- Make sure that policy issues and new bills are properly debated and looked at carefully
- Allow members of parliament to become specialised in a particular field of interest, such as defence or agriculture
- Provide a forum where the public can interact with parliament and government on specific issues and new bills
- Discuss and assess the activities of other government departments

There are about 40 portfolio committees in national parliament, one for each government department and several internal to parliament. For example there are portfolio committees on correctional services, health and international relations and cooperation.

The parliamentary committees of the National Council of Provinces are called Select Committees. There are 11 Select Committees that manage the issues sent to them by the portfolio committees of national parliament.

#### **OTHER IMPORTANT ROLE-PLAYERS IN THE LEGISLATURE**

- The speaker of parliament
- Political party whips (responsible for each party's members of parliament)
- Parliamentary committee chairpersons
- Committee secretaries
- Political party caucuses, where party members meet to discuss the party positions on an issue (these are closed to the public, but key members can be lobbied before meetings to raise issues)

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### **Public participation in the process of making laws and policies at national level**

It is important to know how laws and policies are made as these processes provide opportunities for public participation.

## WHAT IS THE DIFFERENCE BETWEEN A LAW AND A POLICY?

A law is a set of legally binding rules passed by parliament and sets out standards, procedures and principles which must be followed. If a law is not followed, those responsible for breaking them can be taken to court.

A policy outlines a ministry's goals and the methods and principles it will use to achieve them. It is not a law, but it will often identify the need for new laws to achieve its goals.

So, policy sets out the goals and planned activities of government but it needs laws to implement the policy. Laws, on the other hand will be guided by the current policy when they are drafted.

All laws and policies are made according to the Constitution and may not contradict the rights embedded in it.

### THE DIFFERENCE BETWEEN LAW AND POLICY

*A policy statement says: "All citizens should have access to 15 litres of water a day".*

*The law says: "The national government has the power to regulate the amount of free basic water a municipality must supply."*

## MAKING NEW POLICY

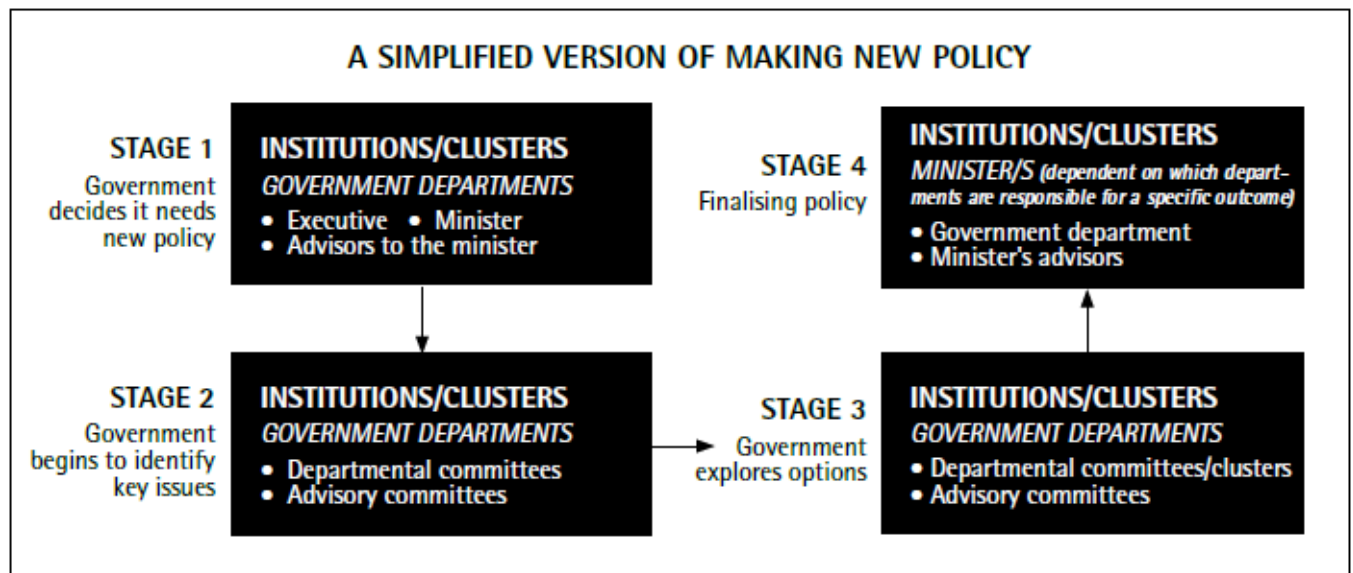
This is a basic format to show the process of making a new policy:

1. The government identifies the need and drafts a new policy.
2. Government identifies key issues. The appropriate department will identify key issues that are relevant to the problem. This is done through research and consultation with people in the field.
3. Government explores policy options. Once the department has explored the key issues, it will draw up a document outlining the key issues and give suggestions for solving the issues. This document is called a green paper or discussion document and is open to the public for comment (typically for a few months)
4. Government finalises the policy. The Department and Ministry look at all the issues and options and decide which issues are important and how they

intend to address these. They also take into account public comment on the green paper or discussion document. Cabinet will have to approve the government's final policy positions. The policy is then published as a white paper and adopted by parliament as the official policy of government. The white paper often forms the basis of laws that have to be passed to give effect to the policy.

## NOTE

The ruling party in government will base their approach on the manifesto and policies of their party. Often, new policies are first discussed in party congresses, and the party's public representatives use these as a basis for the work they do in government. It is also important to try and influence political parties and to participate in their policy-making process whenever you have the opportunity. You can do this as a member of a party or as a participant in any public policy discussions held by the party. You can also lobby senior leaders in the party.



## WHEN CAN YOU PARTICIPATE DURING THE POLICY-MAKING PROCESSES?

There are critical key moments in the policy and law-making process when it is best to lobby. These are linked to:

- The stage in the process of developing policy or law

- Knowing the institution and person involved who has the power to make changes

PARTICIPATING DURING THE POLICY-MAKING PROCESS		
POLICY STAGE	INSTITUTION/ROLE-PLAYERS	OPPORTUNITY FOR LOBBYING
<b>Government decides it needs new policy</b>	<ul style="list-style-type: none"> <li>• Government departments/ clusters</li> <li>• Cabinet committees</li> <li>• Minister</li> <li>• Advisors to the minister</li> </ul>	<ul style="list-style-type: none"> <li>• Media pressure</li> <li>• Alert government to the need for new policy it is considering</li> <li>• Meet with ministers and advisors</li> <li>• Alert parliament to the need for new policy (via parliamentary committees)</li> </ul>
<b>Government begins to identify key issues</b>	<ul style="list-style-type: none"> <li>• Government departments/ clusters</li> <li>• Departmental task forces</li> <li>• Advisory committees</li> </ul>	<ul style="list-style-type: none"> <li>• Become part of advisory committees or task forces</li> <li>• Meet with relevant departments</li> <li>• Comment on discussion documents</li> <li>• Attend workshops</li> </ul>
<b>Government explores options</b>	<ul style="list-style-type: none"> <li>• Government departments/ clusters</li> <li>• Departmental task forces</li> <li>• Parliamentary committees</li> </ul>	<ul style="list-style-type: none"> <li>• Comment on draft policy</li> <li>• Meet with department</li> <li>• Attend parliamentary hearings and make submissions</li> <li>• Attend workshops</li> <li>• Media pressure</li> </ul>
<b>Finalising policy</b>	<ul style="list-style-type: none"> <li>• Minister</li> <li>• Government departments/ clusters (upper level officials)</li> <li>• Minister's advisors</li> <li>• Parliamentary committees</li> </ul>	<ul style="list-style-type: none"> <li>• Comment on revised draft policy</li> <li>• Meet with department or minister</li> <li>• Lobby parliament and attend committee meetings</li> <li>• Use media to stimulate public debate</li> </ul>
<i>Acknowledgement: Based on Voices in Action: The Contact Trust</i>		

## MAKING NEW LAWS

The job of drafting new laws is most often done by government departments. The government may decide it needs new laws to achieve its objectives or to carry out policies that have been drawn up. A draft bill is a draft law that has not been passed by parliament. 'Passed' means approved. An act is a law that has been passed by parliament.

This is a summary of the basic steps for making or passing a new law:

1. A draft bill is drawn up. A bill can be introduced in the National Assembly by a cabinet minister or deputy minister, a parliamentary committee, or a member of the National Assembly. If the bill comes from a department, the minister will first take it to Cabinet for discussion to make sure it does not clash with any other laws or policies. Once Cabinet approves it, it is tabled in the National Assembly. The draft bill can be made available for comment to the public. Once the public has commented, the department will make any changes that they think are necessary.
2. The minister tables the bill in parliament. The Bill is given a number, for example, *Bill 25 of 2011*.
3. Parliament looks at the contents of the Bill and sends it to a *parliamentary portfolio committee* for consideration.
4. The Parliamentary Committee debates the Bill. The Parliamentary Committee may ask the public for comment on the Bill. They will then usually hold hearings for anyone to attend where they debate the Bill. Once they have made any changes, they must send their report back to Parliament.
5. Parliament votes on the Bill. *At least half the members of the national assembly* must vote in favour of the Bill for it to be approved. If there is no majority, the Bill is rejected.
6. If the National Assembly has approved the Bill it gets sent to the *National Council of Provinces (NCOP)*. The NCOP considers the Bill. It can approve, suggest changes or reject the Bill. If it approves the Bill, it refers it back to the *national assembly* to be passed.

**If the bill is about something that only the national assembly can make law on (a Section 75 bill):** The NCOP can approve the Bill or suggest changes, but the National Assembly decides what the Bill finally says. Each member of the NCOP has one vote, and a simple majority of members is needed to approve the Bill. (A simple majority means half the votes plus at least one vote must be in favour of the Bill.) Examples of Section 75 Bills are defence and international relations bills.

**If the matter is one that provinces can make law on (a Section 76 bill):** The NCOP can approve, suggest changes or reject the Bill. To approve the Bill, each province has one vote, and at least five of the nine provinces must vote in favour of it. *If the NCOP suggests changes or rejects the bill and the national assembly doesn't agree, the NCOP can refer the bill to a mediation committee to resolve any differences.* Examples of Section 76 Bills are Bills on environmental affairs, cultural issues, etc.

- The mediation committee consists of 9 members of the NCOP and 9 members of the national assembly.
  - If the mediation committee resolves the differences, it refers the bill to the national assembly to be passed.
  - If the national assembly and NCOP still can't agree, then the national assembly has to have a special vote to make the bill law. It will only become an act if it gets a two-thirds (66%) majority in the national assembly.
7. The NCOP may advertise public hearings on Bills where they ask for public comment. People can also send their written submissions to the NCOP.
  8. The National Assembly passes the Bill.
  9. The President signs the Bill and it gets published in the Government Gazette. When this has happened, the Bill becomes law and is called an Act.

MAKING NEW LAWS: NATIONAL SPHERE	
PROCESS STAGE	INSTITUTION/ROLE PLAYERS
1. Bill tabled in parliament	<b>PARLIAMENT</b> <ul style="list-style-type: none"> <li>• Minister</li> </ul>
2. Referred to parliamentary committee	<b>PARLIAMENTARY COMMITTEE</b> <ul style="list-style-type: none"> <li>• Government department</li> <li>• The public</li> </ul>
3. Committee debates bill	<b>PARLIAMENTARY COMMITTEE</b> <ul style="list-style-type: none"> <li>• Department/ministry</li> <li>• The public</li> </ul>
4. Debate and vote on bill	<b>MINISTER</b> <ul style="list-style-type: none"> <li>• Government department</li> <li>• Minister's advisors</li> </ul>
5. In the case of a section 76, bill referred to NCOP for debate <i>approves, suggests, changes, rejects</i>	<b>NCOP</b>
6. Bill goes back to national assembly <i>changes implemented, bill passed by parliament</i>	<b>PARLIAMENT</b>
7. Bill sent to president for signature	<b>PRESIDENT'S OFFICE</b>



## WHEN CAN YOU PARTICIPATE DURING THE LAW-MAKING PROCESS?

There are critical key moments in the law-making process when it is best to lobby. These are linked to:

- The stage in the process of developing law
- Knowing the institution and person involved (who has the power to make changes)

PARTICIPATING DURING THE LAW-MAKING PROCESS		
LAW-MAKING STAGE	INSTITUTION/ROLE PLAYERS	OPPORTUNITY FOR INPUT
1. Bill tabled in parliament	<ul style="list-style-type: none"><li>• National assembly</li><li>• Minister</li><li>• Party whips</li></ul>	
2. Bill referred to parliamentary committee which holds public hearings	<ul style="list-style-type: none"><li>• Parliamentary committee</li><li>• Department</li></ul>	<ul style="list-style-type: none"><li>• Written submissions</li><li>• Oral representations</li><li>• Informal lobbying</li><li>• Media pressure</li></ul>
3. Committee debates bill and refers it back to parliament	<ul style="list-style-type: none"><li>• Parliamentary committee</li></ul>	<ul style="list-style-type: none"><li>• Written comment</li><li>• Informal lobbying</li><li>• Oral submissions</li><li>• Media pressure</li><li>• Lobbying related structures</li></ul>
4. Debate and vote on bill	<ul style="list-style-type: none"><li>• Parliament and NCOP</li></ul>	<ul style="list-style-type: none"><li>• Written comment</li><li>• Public hearings (NCOP)</li><li>• Media pressure</li></ul>
5. Bill sent to president's office for signature	<ul style="list-style-type: none"><li>• President's office</li></ul>	<ul style="list-style-type: none"><li>• Letter of objection</li><li>• Media</li></ul>

**EXAMPLE: SUMMARY OF THE POLICY AND LEGISLATIVE PROCESS LEADING UP TO THE PASSING OF AN ACT OF PARLIAMENT (THE WATER MANAGEMENT ACT)**

DATE	WHAT HAPPENED
2005	<ul style="list-style-type: none"> <li>• Technical study team appointed to review water management policy</li> </ul>
2006	<ul style="list-style-type: none"> <li>• Green Paper on water management policy for South Africa published</li> </ul>
2007 January	<ul style="list-style-type: none"> <li>• Deadline for comments (on green paper)</li> </ul>
2007 January to July	<ul style="list-style-type: none"> <li>• Executive (cabinet) approves broad policy principles of draft White paper</li> <li>• Draft White Paper on Water Management Policy published</li> </ul>
2007 August	<ul style="list-style-type: none"> <li>• Deadline for written submissions (on White Paper)</li> <li>• Parliamentary committee briefed on draft White Paper</li> </ul>
2007 August to October	<ul style="list-style-type: none"> <li>• Parliamentary committee holds public hearings</li> </ul>
2008 up to May	<ul style="list-style-type: none"> <li>• Draft White Paper amended and adapted</li> </ul>
2008 up to May	<ul style="list-style-type: none"> <li>• Executive (cabinet) approves final draft of White Paper</li> </ul>
2008 May	<ul style="list-style-type: none"> <li>• Copy of draft bill sent to various government departments</li> <li>• Parliamentary committee (portfolio committee) briefed on draft bill</li> </ul>
2008 July	<ul style="list-style-type: none"> <li>• Draft Water Management Bill published</li> <li>• Deadline for comments on draft bill</li> </ul>
2008 August	<ul style="list-style-type: none"> <li>• Changes made to bill</li> <li>• Public hearings in parliament</li> </ul>
2008 September	<ul style="list-style-type: none"> <li>• Parliamentary committee debates bill and refers bill to parliament</li> <li>• National Assembly passes bill</li> </ul>
2008 September to October	<ul style="list-style-type: none"> <li>• Bill referred to National Council of Provinces</li> <li>• Passed by NCOP with amendments</li> </ul>
2008 November	<ul style="list-style-type: none"> <li>• Parliamentary committee agrees to amendments</li> <li>• Refers bill to National Assembly</li> </ul>
2008 6th November	<ul style="list-style-type: none"> <li>• National Assembly accepts changes</li> <li>• Refers bill to president's office</li> </ul>
2008 27th November	<ul style="list-style-type: none"> <li>• President signs the bill, and it is published in the Government Gazette</li> </ul>

*Acknowledgements: Adapted from Voices in Action: published by The Contact Trust*

## DUTIES OF GOVERNMENT TO FACILITATE PUBLIC PARTICIPATION DURING THE LAW-MAKING PROCESS

The National Assembly, National Council of Provinces and provincial legislatures all have a duty to facilitate public participation in terms of the Constitution. Parliament can choose whatever method it believes will be best for public participation but it must make sure that members of the public and all interested parties are given a 'reasonable opportunity' to know about the issues and to have a proper say. A 'reasonable opportunity' means a meaningful opportunity that has the potential to influence a lawmaker's decision and Parliament must take account of the public's views. If there is insufficient public participation in a specific law, then it can be made invalid.

In the Constitutional Court case *Mogale and Others v the Speaker of the National Assembly and others* (2023), the question was whether the National Assembly, the National Council of Provinces and the Provincial legislatures fulfilled their constitutional duty to allow 'reasonable' public participation when they passed the *Traditional Khoi-San Leadership Act 3 of 2019* (TKLA). The Court found there was insufficient public participation, and the TKLA was declared unconstitutional and invalid.

There are three factors that the Constitutional Court said must be considered to decide whether public participation has been 'reasonable':

1. What does Parliament itself determine is reasonable
2. How important the legislation is and its impact on the public
3. Whether there are time constraints with passing a particular law

### Structures of provincial government and public participation in these structures

You can use the same methods to participate in the provincial sphere of government as the national sphere. This is a summary of how you can participate in the law- and policy-making processes in the provincial government.

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## Structures of provincial government

### THE EXECUTIVE BRANCH

The executive branch is responsible for the day-to-day running of the province. Some of the functions of the executive are to initiate laws and policy, carry out laws passed by parliament, carry out policies and coordinate the functions of the provincial government departments and administrators.

#### KEY ROLE-PLAYERS AND STRUCTURES IN THE PROVINCIAL EXECUTIVE

The key role-players in the executive that may play a role in formulating policy or drafting law will be:

- The premier, who is the head of the provincial government executive
- 10 members of the executive council (MEC), also called provincial ministers

### THE LEGISLATIVE BRANCH

The legislative branch of government is responsible for making laws and developing policy. Every province has a Legislature made up of Members of the Provincial Legislature (MPLs). These are the functions of the legislature:

- to develop and pass laws
- to contribute to developing policy
- to act as a watchdog on the activities of government in the province (in the executive)

The legislature consists of the provincial legislature and various committees. These are the key structures that you can lobby in the provincial legislature:

#### LEGISLATURE COMMITTEES

The provincial legislature usually divides the MPLs (members of provincial legislatures) into small groups that focus on specific areas of governance. These smaller groups are called portfolio or standing committees. The main roles of the portfolio committees are to:

- Make sure that issues and new bills are properly debated and scrutinised

- Allow members of provincial parliament to become specialised in a particular field, such as finance or agriculture
- Provide a forum where the public can interact with provincial government on specific issues and new bills
- Oversee, discuss and assess the activities of government departments

There are two types of Committees; however, the names and institutional arrangements differ from province to province:

**Standing committees** are permanent. There are standing committees for each of the portfolios of the executive, for example, the education committee, public transport and roads and works committee. These are also called portfolio committees. There are also other standing committees which are not linked to portfolios but more to the running of the legislature, for example, the Special Committee on Public Accounts (SCOPA) which oversees all government spending.

**Ad hoc committees** are not permanent and only last for the time it takes them to finish a task.

Other important role-players in the provincial legislature include:

- The political party whips
- The parliamentary committee chairpersons
- The committee secretaries
- Political party caucuses and study groups (these are not open to the public, but you can lobby key members before meetings to raise issues)

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## Public participation in the process of making provincial laws and policies

### MAKING NEW POLICY

The process of making policy follows the same format in the provincial legislature as in the national legislature. (See pg 115: *Public participation in the process of making laws and policies at national level*)

## MAKING NEW LAWS

The process of making laws follows the same basic format as in the national legislature. However, there are a few important differences. These are the basic steps for passing a law in the provincial legislature:

1. **A draft bill is drawn up**, either by an MEC an MPL or a standing committee. The bill is published in the Provincial Gazette and notices which bring the bill to the attention of the public are placed in various newspapers. The public has at least 14 days to comment on the bill. Once the public has made its comment, the department will make any changes that they think are necessary.
2. **The Speaker introduces the bill in the provincial legislature.** It will be sent to the appropriate legislature committee.
3. **The legislature committee debates the bill.** The legislature committee may ask the public for additional comments on the bill. They will then usually hold public hearings (for anyone to attend) where they debate the bill, call in experts to comment on the bill and make any changes. Once they have made any changes, they must send their report back to the legislature.
4. **The legislature debates the bill and votes on it.** If there is a majority of votes in favour of the bill, it is passed. If there is no majority, the bill is rejected.
5. **The bill becomes an Act.** If the legislature passes the bill it then goes to the Premier to sign. It then becomes an Act.
6. **The Act is published in the provincial Government Gazette.**

MAKING LAWS AT PROVINCIAL LEVEL	
PROCESS STAGE	INSTITUTION/ROLE PLAYERS
1. Bill tabled in provincial parliament	<ul style="list-style-type: none"><li>• Legislature</li><li>• Minister</li></ul>
2. Referred to parliamentary committee	<ul style="list-style-type: none"><li>• Legislature committee</li><li>• Government department</li><li>• The public</li></ul>
3. Committee debates bill	<ul style="list-style-type: none"><li>• Legislature committee</li><li>• Department/ministry</li><li>• The public</li></ul>
4. Debate and vote on bill	<ul style="list-style-type: none"><li>• Legislature</li><li>• MEC</li></ul>
5. Bill sent to Premier for signature	<ul style="list-style-type: none"><li>• Premier's office</li></ul>

## HOW CAN YOU PARTICIPATE IN THE LAW AND POLICY-MAKING PROCESSES OF PROVINCIAL GOVERNMENT?

You or your organisation can participate in the policy- and law-making processes by:

- Attending provincial legislature committee meetings where policy and new laws are being discussed
- Making a written submission to a committee or to the legislature
- Attending public hearings during the early stage of writing a bill and/or
- Sending a petition and a letter or a document which is signed by many people. (See pg 123: *Duties of government to facilitate public participation during the law-making process*)

### Structures of local government and public participation in these structures

All the methods of public participation described under national and provincial structures can be used at the local level of government.

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### Structures of municipal councils

Each municipality has a council where decisions are made: an executive or mayoral committee that coordinates the work of the municipality, a municipal manager that manages the municipality, and municipal officials and staff who carry out the work of the municipality. The council also sets up smaller committees (See pg 152 *Structures of a Municipality*). The municipality is made up in the following way:

#### **The council**

Elected members (councillors) who represent the people have legislative powers to pass by-laws and approve policies for their area. The council also sets up smaller committees.

**The mayor**

Elected by the council to co-ordinate the work of the council; the mayor and/or executive committee act as the executive of the council. The mayor is assisted by a mayoral executive committee.

**The executive or mayoral committee**

Made up of councillors with specific portfolios which match the departments within the municipal administration; they oversee the work of the municipal manager and department heads.

**The municipal manager**

The chief executive officer is head of the administration of the municipality and legally accountable for the finances and work of the municipality.

**Municipal council officials**

People who work for the administration.

**Ward committees**

Mainly advisory committees which can make recommendations on any matter affecting the ward. A ward committee consists of the councillor and a maximum of 10 people from the ward who are elected by the community. The ward committee, therefore, plays a very important role as a link between the community and decision-makers. It provides important opportunities for public participation. (See pg 154: *Ward committees*)

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**Ways of participating in local government**

The most important opportunities for public participation at the local level are through using ward councillors and ward committees. The ward councillor is the direct link between the local council and the public, operating mainly through the structure of the ward committee. It is the councillor's responsibility to make sure that people are consulted and kept informed about council decisions, development and budget plans and any council programmes that will affect them. The *Municipal Systems Act* requires that municipalities take steps to ensure the participation of communities in decision-making.

Section 16 of the Act considers the following as key areas requiring community participation:

**ASSESSING AND APPROVING THE BUDGET**

Approving the budget is one of the most important functions of the council.



The ward councillor should not approve the budget until there has been proper consultation with the ward committee and other stakeholders. So, ward committees play an important role in the process, and they should look carefully at all the parts of the budget that will affect the people in their area. Of special importance are new developments or projects in the ward and the tariffs (prices) set for services like water and refuse removal. All members of the community have the right to observe the special council meeting when the budget is debated and voted on.

Ward committees should also be given regular feedback on the 'cash flow' of the municipality. 'Cash flow' means the movement of money into (income) and out of (expenditure) the municipality's bank account. Ward committees have a right to ask questions about how well the 'cash flow' is being planned and monitored.

### **PLANNING AND DEVELOPING THE INTEGRATED DEVELOPMENT PLAN (IDP)**

Ward committees should work closely with the councillor and other community organisations (community-based organisations and NGOs) to identify priority needs and make sure these needs are included in the budget proposals and Integrated Development Plans.

### **MONITORING COUNCIL ACTIVITIES ON A REGULAR BASIS**

Ward committees should insist on regular reports and feedback on municipal projects and services, either at ward committee meetings or at public hearings.

### **PERFORMANCE MANAGEMENT**

The municipality must have clear goals and specific targets of what has to be done to make sure the goals are achieved. Every department and staff member should be clear on what they have to do and how their performance will contribute to achieving overall goals and targets. Performance management means that the performance of individuals, departments and the municipality as a whole should be monitored to make sure the targets are met and that resources are being used efficiently. Council should prepare a report for the ward committee at least once a year that shows how it has performed in relation to its objectives and the budget. This usually happens at the end of the financial year (July of each year). The report and audited financial statements must be made available to the public.

### **DIRECT ADVICE AND SUPPORT**

Ward councillors are the most direct form of access people have to government. Usually people will turn to a ward councillor for direct advice and support. Once a

problem has been referred to a ward councillor, the person should demand to know what the ward councillor is doing or has done to deal with the problem.

### **ASK FOR A COUNCILLOR CLINIC TO BE SET UP**

Request the councillor to set up a regular clinic on specific days at a certain place in the community. This means the councillor must be available to see anyone from the community at these agreed times. Advertise these dates around the community.

### **LOBBYING**

Communities can use their councillors to lobby committees, the Mayor and other spheres of government. *(See pg 140: Problem 1: Lobbying local government) (See pg 104: Lobbying)*

### **ATTEND PUBLIC MEETINGS AND PUBLIC HEARINGS**

Attend public meetings called by the councillor, ward committee or council. Identify which committees are making decisions about issues that concern you and attend public hearings of these committees. These meetings are open to the public.

### **USE THE MEDIA**

Approach a local newspaper or community radio station and ask them to write or present a story on an issue that concerns the community, explaining what role the municipal council should play in dealing with the issue.

### **GET PUBLICITY AND GROW SUPPORT**

Hold public demonstrations and mobilise public support (avoid violence and damage as you will lose public support with these actions). Build partnerships, alliances, and networks amongst local organisations and civic groups.

### **PLANNING AND IMPLEMENTATION OF MUNICIPAL SERVICE PARTNERSHIPS**

Service delivery partnerships can be made between the municipality and the private sector, other spheres of government, or with CBOs and NGOs. Ward committees and the community can play an important role in the following ways:

- Help the municipality decide which services to develop and improve
- Develop proposals (with the help of CBOs and NGOs) for council to consider
- Have council appoint a committee of community representatives to monitor processes and to advise the municipality on priorities for service development

Communities or their representatives can evaluate future service providers and monitor the performance of those providing services.

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## **Mechanisms, procedures and processes for community participation in local government**

Section 17 of the *Municipal Systems Act* requires municipalities to put in place systems for communities to participate in the decision-making process. These include:

- The process of receiving, processing and consideration of petitions
- Procedures for notifying the public of issues being considered by the council and a process that allows for public comment
- Procedures for public meetings and hearings by councillors and municipal officials
- Regular sharing of information on the state of affairs of the municipality through consultation with community organisations and traditional leaders.

Municipalities must ensure that people who cannot read or write, people with disabilities, women and other disadvantaged groups are able to participate in these processes.

Each municipality should also have a system for processing and responding to complaints about service problems.

## **Inter-governmental relations and cooperative governance**

Inter-governmental relations are the relationships between the three spheres of government. The Constitution states, 'the three spheres of government are distinctive, interdependent and interrelated'. According to this clause, local government is a sphere of government in its own right and is not a function or administrative implementing arm of national or provincial government. Although the three spheres of government are autonomous, they exist in a unitary South Africa and have to work together on decision-making and must coordinate budgets, policies and activities, particularly for those functions that cut across the spheres.

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## **Co-operative governance**

Co-operative governance means that the three spheres of government should work together (co-operate) to provide citizens with a comprehensive package of services. The Constitution states that the three spheres have to assist and support each other, share information and coordinate their efforts.

Implementation of policies and government programmes requires close cooperation between the spheres of government, especially at executive level. For example, local government is represented in the National Council of Provinces, the Financial and Fiscal Commission and the Budget Council where the Minister of Finance discusses the proposed budget with provincial and local government.

Since 2009, ministries have been created within the presidency to strengthen long-term planning and performance monitoring. Ministries have been set up by different presidencies to address special issues like the electricity crisis, gender equality and youth employment. The National Planning Commission develops long-term planning for the economic and social development of South Africa.

The *Money Bills Amendment Procedure and Related Matters Act*, passed in 2009, enables parliament to exercise its true oversight role – and empowers the legislature to influence the budget directly.

The different spheres of government depend on each other for support in project implementation, and regular communication is essential. For example, when a municipality proposes the development of a new township in its integrated development plan, health and education services have to be provided by provincial government.

Water services have to be provided by national government, and finances for housing development have to be transferred from national to provincial government, from where it goes to the housing developers approved by the municipality.

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## **Inter-governmental relations**

In 2005, the *Inter-governmental Relations Framework Act* was passed to ensure that the principles in Chapter 3 of the Constitution on co-operative government are implemented. The Act seeks to set up mechanisms to coordinate the work of all spheres of government in providing services, alleviating poverty and promoting development. The Act also establishes a line of communication that goes from municipalities to the provinces and directly to the Presidency.

## **NATIONAL INTER-GOVERNMENTAL STRUCTURES**

The President's Coordinating Council (PCC) is the main coordinating body at national level. It consists of the president, the deputy president, key ministers, premiers and the South African Local Government Association (SALGA). The PCC meets regularly to oversee the implementation of national policies and legislation and to ensure that national, provincial and local development strategies are aligned with each other.

At national level, each department has an inter-governmental forum where ministers meet with provincial MECs and SALGA. These forums are called MinMECs and are also attended by heads of departments. The purpose of MinMECs is to consult, coordinate, implement and align programmes at national and provincial level.

## **PROVINCIAL INTER-GOVERNMENTAL STRUCTURES**

The premier in each province is responsible for coordinating relationships between national, provincial and local government in the province. A Premier's Inter-governmental Forum (PIF) consists of the premier, the provincial MEC for local government, other MECs, metro and district mayors and other mayors where necessary. Provinces use different names for these forums. The PIF meets regularly and consults on broad development in the province, as well as on the implementation of national and provincial policy and legislation. It also seeks to coordinate the alignment of provincial and municipal development planning and strategic planning. The PIF reports through the premier to the PCC.

Further optional forums can be established by the premier. In the Western Cape, for example, there is a Metro Inter-governmental Forum (MIF) where the provincial cabinet meets with the Cape Town mayoral committee regularly. The reason for this is that around 70% of the provincial population lives in the metro, and most of the economic and urban development is taking place in that area. There is therefore a huge overlap between the metro's budget and responsibilities and those of the province.

Inter-governmental forums may also be established at district level, where they would consist of the district mayor and local council mayors. Most of the inter-governmental structures are supported by senior management in the public service and in local government. At times, they will meet separately to prepare for the inter-governmental meetings. The Act provides for technical support structures to be established. Every inter-governmental structure must adopt its own rules to

govern internal procedures. Further inter-provincial or inter-municipal forums can also be established where necessary.

## JOINT IMPLEMENTATION AND DISPUTES

In many development projects, more than one sphere of government may be involved in implementation. Where necessary, the different organs of state may enter into an implementation protocol (called a memorandum of understanding, or service level agreement) that describes the role and responsibility of each organ of state; outlines priorities and desired outcomes; and provides for monitoring, evaluation, resource allocation and dispute settlement procedures.

Any organ of state may declare an inter-governmental dispute. They must ensure that every reasonable effort has been made to avoid or settle the dispute before declaring it. Different organs of state cannot institute judicial proceedings against each other unless an inter-governmental dispute has been declared, and all efforts have been made to resolve the dispute. Once a dispute has been declared, organs of state must designate a facilitator and resolve the dispute.

It is very important for the principles of cooperative government, as contained in the Constitution, to be respected and observed by all spheres of government. Different spheres of government shouldn't take each other to court. The *Inter-governmental Relations Act* has been set up to facilitate cooperation and avoid legal proceedings between different spheres of government.

Inter-governmental relations go beyond the Act, and the *Municipal Finance Management Act* also requires consultation in the budgeting and planning process. At provincial level, technical committees should meet regularly to facilitate contact between departments and municipalities and to make sure that there is an alignment of planning priority strategies and resources between provincial and municipal government.

It is not enough for discussion to take place at the Premier's Inter-governmental Forum (PIF) – regular contact is necessary to ensure that development is coordinated and fast-tracked and that obstacles are removed where they impede delivery. This requires ongoing communication and open lines between the different spheres of government.

## Traditional leadership, government and public participation

Traditional leaders and traditional councils have an active and important role to play in local government development programmes and service delivery. The *Traditional Leadership and Governance Framework Act* (No 41 of 2003), recognises tribal authorities as traditional councils with important functions linked to local government.

The Department of Cooperative Governance and Traditional Affairs provides support to the National House of Traditional Leaders; the Commission on the Disputes and Claims (that hears disputes on kingship and traditional leadership); and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (Cultural Rights Commission). Provincial committees deal with all claims and disputes about categories of traditional leadership below the kingship.

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### **The Traditional Khoi-San Leadership Act (No. 3 of 2019) (TKLA)**

The was passed to address shortcomings in the *Traditional Leadership and Governance Framework Act* (TLGFA) which denied certain constitutional rights to people living under traditional leaders. The TKLA recognized Khoi and San leadership, but some people criticized it because it gave new and extended powers over land to traditional authorities.

The TKLA was challenged in Court by rural communities and land rights organisations in 2021. In the case of *Mogale and Others v the Speaker of the National Assembly and Others* (2023) the Constitutional Court found the TKLA was invalid because parliament and provincial legislatures had not held a meaningful public participation process before the law was passed. The Court said that public participation must provide a reasonable opportunity for the public to influence the decision-making process. It said that the TKLA's public participation process was wrong because there was insufficient notice of community hearings, a lack of pre-hearing education, and limited access to hearings. The Court suspended the TKLA, saying it was invalid for 24 months to give parliament time to facilitate a meaningful public participation process.

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## Recognising traditional communities

A community can be recognised as a traditional community if it follows a system of traditional leadership according to its own community's rules and it follows a system of indigenous and customary law.

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## Establishing and recognising traditional councils

Once the premier of the province has recognised a traditional community it can establish a traditional council. The traditional council must be representative of the community in the following ways:

- 33% of its members must be women
- 40% of its members must be democratically elected
- The remaining members can be selected by the chief in terms of custom

The traditional council will be able to operate within a defined area.

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## Functions of traditional councils

The functions of traditional councils are to:

- Facilitate involvement of the traditional community in the development of a local government's integrated development plan (*See: Drawing up an Integrated Development Plan*)
- Support municipalities in identifying community needs
- Recommend interventions to government that will contribute to development and service delivery in the area controlled by the traditional council
- Participate in development programmes of municipalities and of the provincial and national spheres of government
- Promote indigenous knowledge systems for sustainable development
- Administer the affairs of the traditional community according to custom and tradition
- Assist, support and guide traditional leaders in the use of their powers and how they perform their functions
- Participate in the development of policy and legislation at local level
- Enter into service delivery agreements with municipalities regarding the provision of services to rural communities



- Promote the ideals of cooperative governance, integrated development planning, sustainable development and service delivery
- Warn the municipality about any danger that threatens the area or people living in a particular traditional council area
- Perform their duties and use their powers according to customary law in a way that is consistent with the Constitution.

Traditional councils have to be accountable to the provincial government by keeping proper financial records, by disclosing any gifts received and by following a prescribed code of conduct.

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### **Partnerships between municipalities and traditional councils**

Partnerships between municipalities and traditional councils are encouraged, and laws must be passed to strengthen these partnerships.

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### **Withdrawal of recognition of traditional communities**

Provincial laws must provide for the withdrawal of the recognition of a community as a traditional community as well as the withdrawal of the recognition of traditional councils.

A community can request that its recognition as a traditional community be withdrawn and it can request that it be divided into separate traditional communities or merged into single traditional communities. Before a community or council's recognition is withdrawn, there must be consultation with the provincial House of Traditional Leaders.

---

### **Leadership and removal of traditional leaders**

A traditional leader can be removed from office on any of the following grounds:

- Conviction by a criminal court without an option of a fine on any criminal charge
  - Physical or mental incapacity or age
  - Where the finds that the traditional leader was wrongly appointed or recognised.
- 

### **Houses of Traditional Leaders**

Houses of traditional leaders are structured as follows: a national house of traditional leaders, provincial houses of traditional leaders and district houses of traditional leaders.

## **DISTRICT HOUSES OF TRADITIONAL LEADERS**

A district house of traditional leaders must be established in a district municipal area or metropolitan municipality where there is more than one chieftainship. There should be between 5 and 10 members of the district house. The members are elected by an electorate consisting of all kings, queens or their representatives, chiefs and chieftainesses living in the district or metro municipality.

The functions of the district house are to advise the district or metro municipality on matters of:

- Indigenous and customary law, custom, traditional leadership and the traditional communities
- Development of planning frameworks that impact traditional communities
- Development of by-laws that impact traditional communities
- To participate in local programmes that have the development of rural communities as an object
- To participate in local initiatives that are aimed at monitoring, reviewing or evaluating government programmes in rural communities

Where a district house cannot be established, the functions of the district house must be performed by the different traditional councils within the district municipality or metropole.

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### **Resolving disputes in indigenous and customary law**

Where there is a dispute involving indigenous and customary law, members of the community and traditional leaders should try and resolve the dispute internally and according to custom.

If a dispute cannot be resolved internally, then it must be referred to the relevant provincial house of traditional leaders.

If a provincial house of traditional leaders cannot resolve the dispute, then the dispute must be referred to the premier of the province in consultation with the parties to the dispute and the provincial house of traditional leaders.

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## **The Commission on Traditional Leadership Disputes and Claims**

The Act establishes a *Commission on Traditional Leadership Disputes and Claims*. The powers and functions of the Commission are to investigate the following cases:

- Where there is doubt about a kingship, chieftainship or headmanship
- Contests over traditional leadership
- Claims by communities to be recognised as traditional communities
- Establishment or breakdown of tribes
- Disputes over traditional authority boundaries and the merger of tribes

Anyone can lodge a dispute with the Commission. They must say what the dispute or claim is about and give all relevant information. The Commission can decide not to consider the dispute or claim because they don't have enough information.

The Commission can also choose to do its own investigations.

# Problems

## 1. Lobbying local government

The Municipal Council of Maluti-a-Phofung promised that it would provide running water to the whole town before the end of the year. It is now a year later, and there is still no running water in some parts of the town. In addition, the rubbish removal service only works sometimes and the rubbish is piling up and causing a health hazard. The residents of the town have been to see the council, but nothing seems to help. They say it is their right in terms of the Constitution to have running water and a proper rubbish removal service.

### WHAT IS THE LAW?

The Constitution says people have the right to a clean and healthy environment

It is the job of the municipal council to provide facilities and services equally to the whole community. The integrated development plan should include a specific plan for the implementation of services, and communities have a right to know why the council is not implementing its plan.

It is government policy to provide a basic amount of free water (6,000 litres per month) to each poor household, wherever possible.

### WHAT CAN YOU DO?

People can lobby local government and put pressure on them to force them to provide the facilities and services. It is important to check what the municipal council has committed itself to in the IDP and lobby it to implement the plan. There are different ways of doing this, and you can help people plan a campaign around the implementation of services. These are some of the ways to lobby for better services:

- Write to newspapers and build up a support base
- Build community support through speaking to people, for example, in their homes, at schools and religious gatherings
- Attend municipal council meetings that are open to the public and make your demands known
- Organise a peaceful demonstration throughout the town to tell people what the council needs to do
- Send around a petition for people to sign and take this to the council
- Organise public meetings and ask local councillors to attend

- Arrange for a delegation that is representative of the community to meet with councillors
- Make a complaint to the South African Human Rights Commission based on the discrimination against your community and your right to have access to a healthy and safe environment. (See pg 57: *Making a complaint to the South African Human Rights Commission*)

# Checklists

## Lobbying

Find answers to these questions before you start lobbying or campaigning:

- What do you want to campaign for? Be clear about the result you want to achieve
  - Who has the power to decide on that issue?
  - Who else can influence the decision-maker, and how can they be mobilised?
  - What will the opposition say?
  - How will the decision-maker benefit from the result you want to achieve?
  - What lobbying methods should you use?
- 

## Making a written or verbal submission

Plan what you are going to say when you make your submission or what you are going to write in your submission. Focus on your main objective and keep this in mind as you develop a simple message. Use this format when planning the content:

- Introduction: present the issue that has led to you making the submission
- Make two or three points about why it is important to act on the issue
- Present your demands
- State the facts that support your demands (including legal grounds for the demands)
- Give evidence that can prove the facts
- Make suggestions for resolving the issue
- If you use charts or graphs, keep them very simple and clear
- Keep your presentations short, simple and very clear
- Don't be aggressive, threatening or imply that the person knows nothing about the issue.

## WRITTEN SUBMISSION

A written submission should follow the same basic format described in the previous point, but you should include the following:

- Explain who you are and what your organisation represents
- Describe what support you have from other organisations or individuals in respect of the issue
- Say how the person will benefit if they support your proposed action.

## VERBAL SUBMISSION

When you make a verbal submission, you should aim to:

- Gain the respect of the committee members
- Provide a clear and convincing explanation of your position and the facts or reasons behind it
- Win the support of the committee on your issue.

You can use the written submission as the basis for a verbal presentation. However, there are additional factors that apply to a verbal submission. These are:

- Organise your presentation carefully and leave out non-essential information
- Before beginning your presentation, introduce yourself and your group
- Address the Chair of the committee and follow the rules made by the Chairperson
- Try and make your presentation interesting both in terms of style and content
- End with a strong statement of what you want to achieve
- Summarise your presentation in writing and leave it with the group.



## Local government

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## Introduction

Chapter 7 of the Constitution creates a framework for local municipalities. They are a separate and autonomous sphere of government, but their work and plans are interdependent on those of provincial and national government.

### **The Constitution and municipalities**

The municipal council is the legislative authority of a municipality. It has the right to pass by-laws, budgets and policies to govern the local government affairs of its community, subject to national and provincial legislation. The council also elects the executive that oversees implementation (mayor plus committee).

The Constitution also requires that the three spheres of government engage with each other in cooperative government. Section 154 specifically requires national and provincial governments to support and strengthen the capacity of municipalities. Provincial departments of cooperative or local government monitor and support the work of local government.

There are Constitutional limitations to describe the extent to which other spheres of government can intervene when municipalities are unable to exercise their mandate. Section 139 of the Constitution limits the powers that provincial governments have to intervene in the affairs of local government. It says the provincial government can only intervene or take over when it is clear that the local government has not done what it was supposed to do under the law.

### **DEVELOPMENTAL DUTIES OF MUNICIPALITIES**

The key duties of a municipality are to:

- Structure and manage its administration, budgeting and planning processes to give priority to the basic needs of the community
- Promote the social and economic development of the community
- Participate in national and provincial development programmes

### **LAWS AND POLICIES THAT GOVERN LOCAL GOVERNMENT**

Local government is governed by the:

- *Municipal Demarcation Act No. 27 of 1998* sets out how the boundaries of municipalities and wards must be decided

- *Municipal Structures Act No. 117 of 1998* sets out categories and types of municipalities and provides for elections and other matters
- *Municipal Systems Act No. 32 of 2000* sets out systems within which municipalities should operate and procedures that they should follow in their day-to-day operations
- *Municipal Property Rates Act 2003* regulates the power of a municipality to impose rates on property; exclude certain properties from rating in the national interest; make provision for municipalities to implement a transparent and fair system of exemptions, reductions and rebates through their rating policies.
- *Municipal Finance Management Act, 2004* provides for secure, sound and sustainable management of the financial affairs of municipalities.

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## Government response to problems

To address the problems with service delivery and finances in local government, the Department of Cooperative and Traditional Affairs in 2014 adopted the 'Back to Basics' programme that focuses on the following:

1. Putting people first – listening to and communicating with communities through regular ward and consultation meetings and other means
2. Adequate service provision – making sure basic services are delivered, and problems are addressed quickly
3. Good governance and administration – proper systems for planning, implementation and accountability
4. Proper financial management – to ensure that resources are well used and waste and corruption are rooted out
5. Capable administration and institutions – employ qualified people to manage the municipality and build the capacity of councillors

## Cooperative governance and local government

'Inter-governmental relations' means the relationships between the three spheres of government. The Constitution states, "*the three spheres of government are distinctive, interdependent and inter-related*". Local government is a sphere of government in its own right, and is not an administrative implementing arm of national or provincial government. Although the three spheres of government are autonomous, they exist in a unitary South

Africa and they have to work together on decision-making and must co-ordinate budgets, policies and activities.

Although the three spheres of government are autonomous, they have to work together on decision-making and must coordinate budgets, policies and activities, particularly for those functions that cut across the spheres.

Co-operative governance means that the three spheres of government should work together (co-operate) to provide citizens with comprehensive service delivery. The Constitution states that the three spheres have to assist and support each other, share information and coordinate their efforts.

Implementation of policies and government programmes requires close cooperation between the spheres of government, especially at the executive level. Local government is represented in the National Council of the Provinces, although the representatives do not have voting rights. It is also represented in other important institutions like the Financial and Fiscal Commission. The Financial and Fiscal Commission (FFC) is an independent body set up under the Constitution to advise government on the portion of revenue that should go to provincial and local government to subsidise services for poor people (the equitable share).

The *Division of Revenue Act (DORA)* lays down how the total government income (revenue) should be divided and allocated between the spheres of government and within government. Local government is also represented on the Budget Council where the Minister of Finance discusses the proposed budget with provincial and local government.

The South African Local Government Association (SALGA) is the official representative of local government. SALGA has nine provincial offices. Local municipalities join SALGA at provincial level. Executive elections and decisions on policies and programmes happen at provincial or national general meetings. SALGA is also an employers' organisation for all municipal workers, and sits as the employer in the South African Local Government Bargaining Council. SALGA's main source of funding is membership fees payable by municipalities.

The different spheres of government depend on each other for support in project implementation, and regular communication is essential. For example, when a municipality proposes the development of a new housing development in its spatial development framework and integrated development plan, health and education services have to be provided by provincial government. Water services have to be provided by national government, and funding for housing development has to be transferred from national to provincial government, from where it goes to the housing developers approved by the municipality. Some spheres of government are responsible for initial funding, others for medium-term operational costs, while others have to provide capital costs.

---

## Inter-governmental relations

In 2005, the *Inter-governmental Relations Framework Act* was passed to ensure that the principles in Chapter 3 of the Constitution on co-operative government are implemented. The Act seeks to set up mechanisms to coordinate the work of all spheres of government in providing services, alleviating poverty and promoting development. The Act also establishes a line of communication that goes from municipalities to the provinces and directly to the Presidency.

The legislative framework includes the *Intergovernmental Fiscal Relations Act* (1997), the *Intergovernmental Relations Framework Act* (2005), *Public Finance Management Act* (1999), the *Municipal Finance Management Act* (2003), and the *Division of Revenue Act*.

## Different categories of local government

The structure of local government is dealt with in terms of the *Municipal Structures Act* (No. 117 of 1998) which sets out the categories and types of municipalities and provides for elections and other matters. Municipalities may be established in certain categories.

South Africa has 257 metropolitan, district and local municipalities. This is made up of 8 metropolitan, 44 district and 205 local municipalities.

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### Category A municipalities

Metropolitan municipalities are set up in large cities with more than 500 000 voters and are divided into smaller wards (and in some cases, sub-councils, within which wards are located). Metro municipalities are responsible for delivering all services the Constitution provides for. South Africa has eight metropolitan municipalities, namely:

- Buffalo City (East London)
- City of Cape Town
- Ekurhuleni Metropolitan Municipality (East Rand)
- City of eThekweni (Durban)
- City of Johannesburg
- Mangaung Municipality (Bloemfontein)
- Nelson Mandela Metropolitan Municipality (Gqeberha)
- City of Tshwane (Pretoria)

For more information about Category A municipalities, please visit [www.sacities.net](http://www.sacities.net) and <http://www.gov.za/about-government/government-system/local-government>

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## **Category B municipalities**

These are areas that fall outside the eight metropolitan areas. Local municipalities also fall in a district and share powers and functions with District Municipalities.

There are 205 local (Category B) municipalities, and each municipality is divided into wards. People in each ward are represented by a ward councillor.

---

## **Category C (District) municipalities**

District municipalities are made up of several local municipalities that fall in one district. Except for the 8 metros, the rest of the country is covered by the 44 district municipalities, which are divided into local municipalities and share responsibilities with them. Typically, there are between 4-6 local municipalities that fall under one district council.

The purpose of district municipalities (Category C) and local municipalities (Category B) sharing the responsibility for local government in their areas is to ensure that all communities, particularly disadvantaged communities, have equal access to resources and services. This arrangement is made to help local municipalities who do not have the capacity (finances, facilities, staff or knowledge) to provide services sustainably and adequately to their communities. It also helps to cut the costs of running a municipality by sharing resources with other councils.

*For detailed maps and population statistics of each district in South Africa, please visit [http://en.wikipedia.org/wiki/Districts\\_of\\_South\\_Africa](http://en.wikipedia.org/wiki/Districts_of_South_Africa).*

## **Elections for local government**

Elections work differently in the different categories of municipalities.

---

## **Category A: Metropolitan municipality**

Half the councillors are elected according to proportional representation (PR), where voters vote for a party (not a specific person). The other half of the councillors are elected

as ward councillors by the residents in each ward. Two ballot papers are given to the voter – a ward ballot with individual names and a PR ballot with party names.

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### **Category B: Local municipality**

Half the councillors are elected according to proportional representation (PR), where voters vote for a party. The other half are elected as ward councillors by the residents in each ward. Voters get these two ballot papers plus a third one for the district council.

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### **Category C: District municipality**

Voting for the district municipality is done on a separate ballot paper at local and DMA levels. The district council is made up of two types of councillors:

- 40% of councillors are elected to the district council by all voters in the area according to proportional representation, where voters vote for the party (40% of the district councillors)
- 60% of councillors are drawn from elected councillors of local municipalities in the district who are sent by their councils to represent them on the district council.

Each council gets a portion of the councillors determined by the number of voters in their municipality.

The following table summarises the types of councils, the areas they cover, how voters living within the council areas can vote, the number of councillors each may have, and how the council is made up of councillors.

TYPE OF COUNCIL	AREAS	TYPE OF ELECTION	NUMBER OF COUNCILLORS	WHERE THE COUNCILLORS COME FROM
<b>A: METRO COUNCIL</b>	8 largest cities in South Africa	2 Ballots  1 Ward vote 1 PR vote for metro council	Not more than 270	50% from ward votes  50% from PR votes
<b>B: LOCAL COUNCIL</b>	All town plus surrounding rural areas	3 Ballots  1 Ward vote 1 PR vote for local council 1 PR vote for district council	3-90	50% from ward votes  50% from PR votes
<b>C: DISTRICT COUNCIL</b>	Area with a number of local municipalities	PR Ballot Voting is done at local council voting stations	3-90	40% from local council PR vote for district council  60% from local council representatives

PR = Proportional Representation

PR means proportional representation, where voters vote for a political party, not an individual candidate within a party. The ballot paper just shows the political parties. Then, the party gets the same share of the number of councillors as the share of total PR votes it got. The party decides which members fill those councillor places. The party can remove a PR councillor at any time and replace her or him with someone else.

With a ward vote, the ballot paper shows the names of candidates and the party they represent (some candidates may be independents). When a ward councillor resigns, dies, or is disqualified, a by-election is held to elect a new councillor in their place. A ward councillor who leaves the party they represented in the election must resign.

## The structures of a municipality

Each municipality has a council where decisions are made, and municipal officials and staff carry out the work of the municipality.



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## Composition of a municipality

### ELECTED COUNCILLORS

Elected members have legislative powers to pass by-laws and approve policies for their area. By-laws must not conflict with other national and provincial legislation. They have to pass a budget for the municipality each year, and they have to decide on development plans and service delivery for their municipal areas. This development plan is commonly known as the IDP (integrated development plan). Councillors meet in committees to develop proposals for council. *(See pg 154: Role of a ward councillor on the ward committee)*

### THE MAYOR

The functions of the mayor and councillors are set by the *Municipal Structures Act*. The mayor is elected by the municipal council to coordinate the work of the municipality. The mayor is the political head of the municipal executive and is assisted by the executive committee or the mayoral committee.

### THE EXECUTIVE OR MAYORAL COMMITTEE

There are two systems for the appointment of an executive:

- The executive mayor is elected by the council, and they appoint a mayoral committee
- The mayor works with an executive committee (Exco) elected by the council

So, 'the executive' refers to the executive mayor and the mayoral committee OR the mayor plus the executive.

The executive or mayoral committee is made up of councillors with specific portfolios that match the departments within the municipal administration, for example, health. The executive and the mayor oversee the work of the municipal manager and department heads. The executive proposes policy and presents budget proposals and implementation plans to the whole council. The executive is accountable to the council and has to get approval from the council.

Once policies, budgets and implementation plans are approved by council, the executive is responsible for ensuring that the municipal administration implements them.

Councillors play a monitoring and oversight role in this process.

## **THE MUNICIPAL MANAGER AND MUNICIPAL OFFICIALS**

The municipal manager is the chief executive officer and is the head of the administration of the council. They are responsible for the overall functioning of the administration, for managing the finances and for hiring and disciplining staff. Municipal officials work for the administration and report to the municipal manager.

## **WARD COMMITTEES**

A ward committee can be set up for each ward councillor to assist and advise the councillor and improve public participation. Ward committees can be set up in category A and B municipalities where the ward committee model is being used. Ward committees are mainly advisory committees that can make recommendations on any matter affecting the ward. The municipal council makes the rules that guide the ward committees. The rules say how the members of the ward committee will be appointed, how often ward committee meetings will take place and the circumstances under which a member of a ward committee can be told to leave the committee. The purpose of a ward committee is to:

- Get better participation from the community to inform council decisions
- Make sure that there is more effective communication between the council and the community
- Assist the ward councillor with consultation and report back to the community
- Advise the ward councillor on issues and development in the community

## **STRUCTURE OF WARD COMMITTEES**

A ward committee consists of the councillor who represents the ward as elected in the local government elections, and a maximum of 10 people from the ward who are elected by the community they serve. Women should be equally represented on ward committees.

The councillor is the chairperson of the ward committee. Members of the ward committee must participate as volunteers and are not paid for this work.

## **ROLE OF A WARD COUNCILLOR ON THE WARD COMMITTEE**

A ward councillor is directly elected to represent and serve the people in a specific ward. There are usually between 3 000 and 20 000 voters in a ward. The ward councillor should make sure that the interests of the people in the ward are represented as properly as possible. The ward councillor should be in touch with the issues in the area, understand the key problems and monitor development and service delivery. In committees, caucuses and

council meetings, the ward councillor should act as a representative for the people in the ward. The ward councillor chairs the ward committee.

The ward councillor is the direct link between the council and the voters. They make sure that voters are consulted and kept informed about council decisions, development and budget plans that affect them.

People can also bring their problems to the ward councillor and they should properly deal with these, for example, by taking up matters with council officials.

### **ROLE OF THE WARD COMMITTEE**

The main role of the ward committee is to make sure that voters are involved in and informed about council decisions that affect their lives. The ward committees should be set up in a way that they can reach most sectors and areas in the ward.

The ward committee's main tasks are to communicate and consult with the community in respect of development and service plans. It has no formal powers, however to force the council to do anything. The council should provide support, for example, providing publicity for meetings, giving financial and administrative support to enable ward committees to do their work. This is a summary of their tasks:

- Prepare, implement and review the integrated development plan
- Establish, implement and review municipality performance management systems
- Monitor and review municipality performance
- Prepare municipality budgets
- Participate in decisions about the provision of municipal services
- Communicate and disseminate information on governance matters

### **MAIN TASKS OF WARD COUNCILLORS AND WARD COMMITTEES**

Ward councillors and committees must know their communities and the people they represent. They should know:

- Who the people are in the ward (spread of age groups, gender, employment status)
- What problems they experience, and their needs
- What their attitudes and opinions are towards council plans and proposals
- The environment of the ward (types of housing, services provided or not provided, for example, water, sanitation and electricity, schools,

hospitals, clinics, shops, markets, factories, places of worship, community halls, access to transport)

- What is happening in the community (what organisations or bodies exist in the community: political parties, cultural groups, civic forums, business, youth organisations, women's organisations, NGOs, traditional leaders, gangs, crime, sport, school governing bodies, etc.)

Ward councillors and committee members can find out more about their communities through general community meetings and direct consultation (going door-to-door and conducting a survey).

They should also keep up to date with developments in the council in order to pass this information on to people in their ward.

The *Local Government Laws Amendment Act of 2008*, an amendment of Section 73 of Act No. 117 of 1998 (*Municipal Structures Act*), ensures that 'out-of-pocket' expenses (of ward committee members) must be paid from the budget of the municipality in question. Metro or local councils must develop a policy and determine criteria for calculating the 'out of pocket' expenses and can allocate funds and resources to enable ward committees to perform their functions, exercise their powers and undertake development in their wards within the framework of the law.

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## **The difference between councillors (elected representatives) and administration officials (employees)**

The distinction between the roles of elected representatives (councillors) and municipal employees is very important. Councillors are elected public representatives to serve for five years. Councillors are elected by the people onto a local council and only keep their positions if they are re-elected.

Officials or employees are appointed by municipal management to specific jobs within the municipal administration and are like any other employee in a job. Senior officials, such as the municipal manager, chief operating officers, director of finance, director of housing etc, should have employment contracts subject to annual performance. Their performance agreements must be made public on the websites. Together they make up the management of a municipality.

Councillors give political direction and leadership in the municipality, depending on the balance of power between the political parties elected to the council.

Councillors and officials determine the policies and direction of the municipality.

Officials should have the knowledge and skills in the technical and specialised aspects of municipal affairs. Councillors who don't have this knowledge have to rely on the reports of officials to help them make decisions. Councillors have to weigh up recommendations from officials with community needs and interests.

Once the council has reached a decision then officials are expected to carry these out in the most efficient and cost-effective way.

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## **Links between the council and administration/employees**

The main formal contact persons between councillors and the municipal administration are the executive mayor and the municipal manager. There should also be an informal relationship between each mayoral or executive committee member and the matching head of department within the municipal administration, for example, between the councillor responsible for health and the head of the health department.

There should be clear lines of communication, accountability, and separation of roles. A councillor should not interfere in the management or administration of a department, for example, by giving direct instructions to municipal employees or interfering with the implementation of a council decision. Officials may not try to unduly influence the council or provide it with misleading information.

## **CODE OF CONDUCT FOR MUNICIPAL COUNCILLORS**

The Code of Conduct for Councillors is outlined in *Schedule 1 of the Municipal Systems Act of 2000*, and an additional Code was inserted in 2002. The code of conduct refers to *general conduct*, such as performing their functions of office in good faith, honestly and in a transparent matter, at all times acting in the best interest of the municipality, without compromising the credibility and integrity of the municipality.

Councillors *must attend each meeting*. Leave of absence is granted within the rules and orders of the council. Councillors may be sanctioned for non-attendance. Councillors should also disclose direct or indirect public or private business interest.

*Personal gain*: A councillor may not use their position or privilege as a councillor, or use confidential information obtained as a councillor, for their benefit or gain, or to incorrectly benefit another person. They also cannot be a party to, or be a beneficiary under a contract for the provision of goods or services to the municipality, or for the performance of any work other than as a councillor for the

municipality. They cannot have a financial interest in any business of the municipality, or acquire a fee by appearing on behalf of any other person before the council or a government committee.

A councillor should, within 60 days of their appointment or election, *declare in writing their financial interests*, including shares and securities in any company, membership of a close corporation, interest in any trust, directorships, partnerships, pension, interest in property, subsidies, grants and sponsorship by any organisation, gifts above a prescribed amount must be declared. Full-time councillors may not undertake any other paid work.

A councillor *may not request, solicit or accept any gift for voting/not voting on any matter*; disclose privileged or confidential information; disclose any privileged or confidential information of the council or committee to any unauthorised person.

Other than provided by law, *may not interfere in the management or administration of any department* of the council unless mandated by council, give or purport to give any instruction to any employee of the council except when authorised to do so, encourage or participate in conduct that would cause or contribute to maladministration within the council.

A councillor *may not use, take, acquire or benefit from any property or asset owned, controlled or managed by the municipality* to which that councillor has no right.

A councillor *may not be in arrears to the Municipality for rates and service charges for a period longer than 3 months*.

Councillors are barred from doing business with the state.

## **REPORTING CORRUPTION IN MUNICIPALITIES**

Corruption is the abuse of a position in government and/or resources for personal gain. Corruption makes government weak, reduces transparency and accountability and removes trust in government and private institutions. For example, when public funds that could have been spent to meet essential basic services such as water and sanitation, education and health care or developmental needs such as poverty alleviation are either misused, misappropriated, or stolen. Corruption affects everyone negatively, but mostly the poor and vulnerable.

All government bodies are required to give employees a copy of guidelines which explain procedures for receiving and dealing with information about corrupt behaviour.

Municipalities should have a whistleblowing policy or established channels for reporting corruption. Check the municipality's official website or contact their

office. There might be dedicated phone lines, email addresses, or web portals for people wanting to report corruption.

The *Protected Disclosures Act (No. 26 of 2000) (Whistleblowers Act) Regulations* provide that a whistleblower can make a protected disclosure to:

- The Public Protector which investigates complaints from the public against government bodies or officials
- The South African Human Rights Commission
- The Commission for Gender Equality
- The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities
- The Public Service Commission
- The Auditor General

A protected disclosure can be made to a Chairperson of a Municipal Council, Minister or Member of the Executive Council (MEC) of a province.

These are other options for reporting corruption:

**Contact the authorities:**

- *South African Local Government Association (SALGA)*: As an association representing the interests of municipalities, SALGA can be approached for advice or to report corruption.
- *South African Police Service (SAPS)*: If you believe a crime has been committed, you can report it to your nearest police station. You can also report any crime anonymously to the SAPS toll-free hotline, Crime Stop: 0860010111

**Hotlines and platforms:**

- *National Anti-Corruption Hotline (NACH)*: Managed by the Public Service Commission. You can report corruption to:
  - The toll-free number: 0800 701 701, or
  - Email them at: [publicservicecorruptionhotline.org.za](mailto:publicservicecorruptionhotline.org.za); [integrity@publicservicecorruptionhotline.org.za](mailto:integrity@publicservicecorruptionhotline.org.za); or,
  - SMS: 39772
- *Corruption Watch*: This is an NGO that gathers and reports on corruption complaints from the public. You can use their online platform to submit a report on corruption. Go to [www.corruptionwatch.org.za](http://www.corruptionwatch.org.za) and click on 'Report'.

## PROTECTING WHISTLEBLOWERS

A whistleblower is a person who discloses information about wrongdoing in the workplace and reasonably believes that there is evidence of gross mismanagement or activity that is illegal, criminal, unethical, corrupt, or it violates the law.

South Africa has laws to protect whistleblowers under the *Labour Relations Act*, the *Company's Act*, the *Protection Against Harassment Act* (No. 17 of 2008) and the *Protected Disclosures Act* (PDA) (No. 26 of 2000) (*Whistleblowers Act*).

The *Whistleblowers Act* is the main law used to protect whistleblowers. It protects people who blow the whistle on corrupt activities at work. The Act says that every employer and employee has a responsibility to disclose criminal and any other irregular conduct in the workplace. Employers have a responsibility to make sure that an employee who discloses information is protected from any negative consequences to their work, such as:

- Disciplinary action
- Dismissal, suspension, demotion, harassment, or intimidation
- Transfer against an employee's will
- Refusal of transfer or promotion
- Changing a term or condition of employment or retirement which impacts negatively on the employee

The PDA provides that an employee may not suffer any negative consequences from their employer if they report conduct so long as it is made:

- In good faith, which means the whistleblower believes it is true
- According to a correct procedure
- Not for personal gain
- Without committing a criminal offence
- To the right authority

Contact a lawyer or Legal Aid if you think you need legal advice or protection as a whistleblower.

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## Summary of key principles

The mayor and executive or mayoral committee are responsible for making policy and monitoring outcomes, while the municipal manager is responsible for managing the administration to implement policy and achieve the specified outcomes.



- Councillors approve policy or amend budgets and priorities proposed by the executive or committees.
- Councillors pass by-laws that reflect their policies and objectives.
- The executive or mayoral committee sets the vision, mission, outcomes and outputs required of the administration.
- The municipal manager must carry out the instructions given by the executive on behalf of the council.
- The municipal manager and administration must give the executive regular reports on its activities.
- The executive checks that the municipal manager is carrying out their duties under the employment contract.
- The council monitors the performance of the mayor and executive.
- A councillor cannot give an official direct instruction to do something - this goes against the lines of accountability.
- Officials may not try to unduly influence the council or provide it with misleading information.
- To avoid corruption, councillors and officials may not be in a business venture together.

The *Municipal Structures Act* sets out codes of conduct for councillors (these codes apply equally to traditional leaders).

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## **How decisions are made in council**

Most councils follow the same pattern of decision-making as follows:

- Agendas are prepared before meetings, and any committee reports, petitions, or motions have to appear on an agenda before they can be discussed
- Some reports appear on pink or green paper, and that is classified as confidential
- When an issue comes up for discussion at a council meeting, it is often referred to a committee or to the executive for further discussion, and a deadline is given for when a report should be made
- If the matter is referred to a committee, the committee will report to the executive committee. The executive will consider the issue and either support the recommendations or put forward opposing recommendations to the council meeting
- The council then votes on the matter

## **RAISING ISSUES WITH COUNCIL**

There are many different ways that councillors (and the public) can raise issues with the council. These are:

### **PETITIONS**

Councillors or individuals are allowed to send petitions to the municipal manager. The purpose of the petition is to inform the council and the administration that a large number of people want something to be done, for example, if a law is not being applied properly.

Petitions are handed to the council secretary at the council meeting. The petition is usually referred to the management committee, which will then report to council. The officials send the petition around to the relevant departments who will make recommendations to the relevant committees. These committees then make recommendations to the executive. The executive discusses the petition and then makes recommendations to the council.

The councillor or group that has sent the petition must follow its progress by keeping in contact with the relevant departments.

### **QUESTIONS TO COUNCIL**

Questions can be used to monitor progress and implementation and get reliable information about council policies and programmes. Questions can be sent in writing or asked during a meeting. Written questions must be submitted 10 days before the council meeting so that the officials have time to prepare the answers. Answers will often be given at the meetings themselves. The executive chairperson can often answer a question verbally or provide a reply in writing. Any councillor can ask a question about executive recommendations or decisions and any executive member can make immediate verbal replies.

### **REQUESTS**

Collective and individual requests are the easiest way to get information or to bring problems to the attention of officials. When councillors table requests on behalf of their constituency, this should be done in a manner that respects rules and protocol. If by-laws exist to address a request, then a positive response may be done quickly.

For example, if someone has a blocked water drain, you can go to the relevant official and make a request to get it fixed. But if you want something new in your ward and there is no policy on this, then a request will not work.

## The role of municipal councils

The roles played by municipal councils are to:

- Pass by-laws - local laws and regulations about any of the functions they are responsible for. By-laws may not go against any national laws and are subject to the Constitution.
- Approve budgets and development plans - every year a municipal budget must be passed that sets down how money will be raised and spent. The council must also approve the integrated development plan.
- Impose rates and other taxes, for example, property tax
- Charge service fees - for using municipal services like water, electricity, libraries, and so on
- Impose fines - for people who break municipal by-laws, for example, traffic fines, littering
- Borrow money - the council can take a loan for a development or other project and use the municipal assets as surety
- Draw up, approve or amend integrated development plans (IDPs)

In playing their role, municipal councils have a duty to:

- Use their resources in the best interests of the communities
- Be democratic and accountable in the way they govern
- Encourage communities to be involved in the affairs of local government
- Provide services to the community
- Make sure the environment is safe and healthy

## RESPONSIBILITIES OF MUNICIPALITIES PART B: SCHEDULE 4 & PART B: SCHEDULE 5 OF THE CONSTITUTION

Municipal councils have executive and legislative powers for these functions.

In other words, they have the right to make laws and decisions about the affairs of residents and communities in their areas and to claim service fees from residents regarding:

- Electricity delivery
- Water for household use
- Sewage and sanitation
- Storm water systems
- Refuse removal
- Fire fighting services
- Municipal health services
- Decisions around land use
- Local roads
- Local public transport
- Street trading
- Abattoirs and fresh food markets
- Parks and recreational areas
- Other community facilities
- Local tourism

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### The role of district councils

District Municipalities must see to the development of their areas as a whole. They must build the capacity of local municipalities in their areas so that the local councils can carry out their functions. District Councils must also ensure those resources and services are distributed fairly amongst the local municipalities.

These are some of the functions and powers of District Councils:

- To plan for the development of the district municipality as a whole
- Bulk supply of water for the municipalities in the district
- Bulk supply of electricity for the municipalities in the district
- Bulk sewage purification works and main sewage disposal
- Waste disposal sites for the whole district council area
- Municipal roads, if support is needed, and gravel roads for the whole district council area
- Regulating passenger transport services
- Municipal health services for the whole area
- Fire-fighting services for the whole area
- Control of fresh produce markets
- Control of cemeteries
- Promoting local tourism for the whole area
- Municipal public works

National or provincial government can also delegate other functions to municipalities, though these must be within the limits of legislative provisions to do so.

Where local municipalities lack capacity, the district should provide the service directly to the people at local level – for example, fire trucks and road scrapers are often based in district municipalities and serve all the locals.

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## **The developmental role of local government**

Local governments must play a developmental role in their communities. This means working with communities (leaders and organisations) to find sustainable ways to meet the social, economic and material needs of people and to improve the quality of their lives. In particular, local governments should target people who are most often marginalised or excluded, such as women, disabled people and very poor people.

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## **The four main aims of developmental local government**

### **1. TO DEVELOP COMMUNITIES AND PROVIDE FOR ECONOMIC GROWTH IN THE AREA**

Municipalities must be serious about their responsibility to provide services to meet the basic needs of the poor in the most cost-effective and affordable way. They should do this in the following ways:

- Consult communities about services, affordability of service fees and service levels
- Provide effective relief for the poor, for example, a specific allocation of free water and electricity to people who don't have access to these services or who are unable to pay for them, and an indigent policy for people who are too poor to pay for additional services they need.
- Set up partnerships with the community, local businesses and organisations to develop and improve the conditions people live under
- Work in partnership with local businesses to improve economic development, job creation, and investment in the area.

## **2. CO-ORDINATE THE DIFFERENT SECTORS INVOLVED IN DEVELOPMENT OF THE AREA**

There are many different sectors involved in the development of an area, for example, national and provincial departments are all involved in some way in establishing and maintaining health clinics, schools, etc. There are also parastatals (partly government, partly private) like Eskom and Transnet, trade unions, businesses and non-government organisations that play a role in developing an area. The municipality must take responsibility for co-ordinating all their activities for the benefit of the whole community.

## **3. ENCOURAGE PARTICIPATION IN DECISION-MAKING PROCESSES**

Local councillors should make sure that the broader community is involved in the decision-making processes. They can do this through the ward committees and community consultation.

## **4. LEARN ABOUT NEW WAYS TO ENCOURAGE COMMUNITY DEVELOPMENT AND LEAD THE COMMUNITY**

People around the world are always thinking of new and better ways to build communities. For example, there are new ideas on how to create jobs, protect the environment, save water, do away with poverty, and so on. Local government leaders need to know about these changes and build them into their policies.

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### **Is your local government playing a developmental role?**

Ask yourself these questions to see whether your government is playing a developmental role. Do they:

- Provide services to everyone, for example, local roads, stormwater drainage, refuse collection, electricity, water?
- Try and integrate living areas – for example, the poor often live far away from the business and industrial areas?
- Introduce schemes to promote job creation?
- Provide adequate services to encourage people to live and work there?

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## **Drawing up an Integrated Development Plan (IDP)**

Integrated development planning is an approach to planning that involves the whole municipality and its citizens in finding the best solutions to achieve effective long-term development. An IDP is a broad plan for an area that gives an overall framework for development. It looks at existing conditions and facilities, at the problems and needs and finally at the resources available for development.

The six main reasons why a municipality should have an IDP are to:

- Make good use of scarce resources
- Help speed up delivery of services to poor areas
- Attract additional funds (government departments and private investors are more willing to invest their money where municipalities have an IDP)
- Strengthen democracy
- Overcome the inequalities and discrimination of the apartheid system
- Promote coordination between local, provincial and national government

All municipalities have to draw up an IDP in consultation with local forums and stakeholders. In other words, the public must participate fully in the process. The final IDP document has to be approved by the council. The plan must show:

- The basic needs of disadvantaged sections of the community
- The long-term vision for meeting those needs
- The need for these sections of the community to advance socially and economically
- How the plan will be financed and whether it is financially sustainable, that there will be money in the future to keep the plan going
- The capacity of the municipal council to carry out the plan and what resources are available to help carry out the plan.

The municipality is responsible for coordinating the IDP and must draw in other stakeholders in the area who can help and/or benefit from development in the area. Decision-making is devolved from the executive mayor or Exco, who pass on responsibility to the municipal manager and municipal officials. All municipal planning must take place using the IDP, related policies, by-laws and plans as a guide. The annual council budget should be based on the IDP.

## **LOCAL ECONOMIC DEVELOPMENT (LED)**

LED is an approach towards economic development that allows and encourages local people to work together to achieve sustainable economic growth and development and, in this way, bring economic benefits and improved quality of life to all residents in a municipal area.

Municipalities decide on LED strategies, and the process of arriving at an LED strategy must be part of the integrated development planning (IDP) process. Local economic development must aim to create jobs by making the local economy grow. This means that more businesses and factories should be started in the municipality.

As part of the IDP, people in a municipality must come together to reach an agreement and make decisions to make the economy grow and create income opportunities for more people, especially the poor.

The LED strategies should be based on the overall vision outlined in the IDP and should take into account the result of the analysis phase. It should also look at things like integrating our residential and work areas, building development corridors between areas and supporting the economy with good public transport.

Key principles underlying Local Economic Development include:

- Making job creation and poverty alleviation a priority in any LED strategy
- Targeting previously disadvantaged people, marginalized communities and geographical regions, black economic empowerment enterprises and supporting SMMEs to allow them to participate fully in local economies
- Promoting local ownership, community involvement, local leadership and joint decision-making
- Involving local, national and international partnerships between communities, businesses and government to solve problems, create joint business ventures and build local areas
- Using local resources and skills
- Integrating diverse economic initiatives in a comprehensive approach to local development
- Applying flexible approaches to respond to changing conditions

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## **Municipal service delivery**

Municipalities have the responsibility to make sure that all citizens are provided with services to satisfy their basic needs. The most important services the municipality must provide are:

- Water supply
- Sewage collection and disposal
- Refuse removal
- Electricity and gas supply
- Municipal health services (mostly environmental health)
- Municipal roads and stormwater drainage



- Street lighting
- Municipal parks and recreation

Municipalities provide services to people by using their own resources – finances, equipment and employees. People must pay a certain rate to the municipality for providing these services.

## **FREE BASIC MUNICIPAL SERVICES**

The government provides free basic levels of water, electricity and sanitation for the poor. This is only a small amount each month, and those who use more than the free allocated amount have to pay for it.

### **Free basic water**

The free basic water amount allocated to poor households is 6 000 litres per household per month. This might vary from municipality to municipality so households should contact their municipality directly to find out exactly what the free basic water service is that they provide.

### **Free basic electricity (FBE)**

The amount of free electricity is 50kWh per household per month. This is approximately the amount of energy needed for basic lighting, running a small black and white TV and radio, basic ironing, and basic water boiling through an electric kettle. Households that use above this amount will have to pay for it.

FBE is intended for indigent or low-income households. In many municipalities FBE is automatically provided to households using a pre-paid electricity meter, but some municipalities might require households to apply and prove their low-income status.

Users who have pre-paid electricity meters will receive their FBE allocation at the beginning of each month. Once the free units are used up, the household will need to buy more electricity at the normal rate. The free allocation doesn't roll over to the next month. This means if a person doesn't use all of their FBE in a given month, they lose any unused portion and will have to start again with the new month's allocation.

Users with traditional meters (where they pay at the end of the month) will usually have to go through a means test to qualify for the FBE. Their FBE will normally be deducted from the monthly bill (if they qualify). These users will not easily be able to see when they have used up their FBE units. They will be charged for additional use at the end of each month.

### **How to claim Free Basic Electricity (FBE)**

If you qualify for FBE your municipality will include you on the list of FBE

beneficiaries (qualifying people) and then submit the list to Eskom so that you can claim your FBE token.

Once you are registered you are entitled to a monthly amount of free electricity. This electricity is usually provided in the form of a prepaid FBE token (a number code that is punched into a prepaid meter). You can access the FBE token number through your mobile device. If you are a new beneficiary, you can claim your free electricity as follows:

- Dial \*130\*269#
- Select the FBE prompt
- Select 'NEW'
- Enter the electricity meter number
- Confirm that the number is correct
- Click Dismiss
- An SMS will be sent to you

If your household is already registered for FBE, you can access the FBE token number through your mobile device by dialling \*269\*120# or \*130\*869#

The FBE tokens are effective from the 1st of the month and can be collected anytime during the specific month. One only FBE token will be accepted by the meter during a specific month and it will expire at the end of the month. In other words, the tokens cannot be carried over from month to month. For traditional credit meters, the total units used by a household in a month will be reduced by the amount of free basic units.

### **Free basic sewage and sanitation**

Sewage and sanitation, as well as solid waste management, are subsidised up to R50 per month or 100% subsidy for indigent households.

### **Who qualifies for free basic municipal services?**

Only indigent households qualify for free basic services. To qualify for free basic services, a household must be classified as an indigent household by their local municipality. Free basic services of the first 50kw or 6000 litres are usually automatically given to all households that are on prepaid meters. For households using traditional billing meters they will need to do a means test to qualify. Their FBE will normally be deducted from the monthly bill (if they qualify).

The means test will decide whether households meet the criteria set by the municipality to qualify for indigent status. Municipalities determine their own categories of subsidies. In some municipalities, households qualify for 100% subsidies, while others qualify for less than 100% depending on the criteria set.

Once a household qualifies for free basic services, they will be included on the list of FBE beneficiaries.

## **MUNICIPAL SERVICE PARTNERSHIPS**

Municipalities can 'outsource' to other bodies, businesses or people to provide these services. This means it can choose to hire someone else, an NGO, CBO or private company to deliver the service but the municipality is still responsible for choosing the service provider and for making sure that they deliver the service properly.

When a municipality 'outsources' to someone else, this is called a municipal service partnership (MSP). This is not the same as privatisation but must be done carefully so that the municipality keeps control over the quality and cost of services.

So, an MSP is an agreement between a municipality and a service provider. Under this agreement, a service provider agrees to provide a particular municipal service on behalf of the municipality within a certain time frame and budget. The service provider can provide a service to the whole community or part of it. For example, it may be responsible for collecting rubbish in a certain part of the community.

MSPs can also be made with other spheres of government or government projects like the expanded public works programme. Work opportunities, such as expanded public works programmes and the community work programme are being rolled out to help unemployed people and engage them in doing community work for a small stipend. They often clean streets, do safety patrols, manage food gardens, look after old and bedridden people or help with extra classes or sports at schools.

## **MUNICIPAL INFRASTRUCTURE GRANT (MIG)**

The MIG is a financial grant made by the national government to support and promote infrastructure development in municipalities. The MIG aims to remove municipal infrastructure backlogs in poor communities to ensure the provision of basic services such as water, sanitation, roads and community lighting.

The Department of Cooperative Governance (COGTA) is responsible for managing and transferring the MIG and provides support to provinces and municipalities in implementing the grant projects.

Here's how the MIG works:

**Allocation:** The allocation of the MIG to various municipalities is based on a formula that takes into account the population, economic activity, and poverty level of the area. Municipalities that are less

developed or have a larger infrastructure backlog will generally receive a larger proportion of the grant.

**Project-based:** The MIG is project-based, meaning that municipalities apply for funding based on specific infrastructure projects. Each project needs to be well-defined and must cater to the basic needs of the community.

**Conditions:** While the grant is intended to offer flexibility to municipalities, there are conditions attached to ensure that funds are used efficiently and for the purpose that they were intended. The national government requires municipalities to provide detailed plans, monitoring, and reporting on the progress of the projects funded by the MIG.

**Compliance:** Municipalities are expected to comply with various frameworks and guidelines when implementing projects funded by the MIG. This includes considerations for community involvement, environmental impact, and sustainability.

**Monitoring and reporting:** Regular monitoring and reporting are essential components of the MIG. Municipalities need to submit periodic progress reports to the Department of Cooperative Governance and Traditional Affairs (COGTA) detailing the implementation and financial status of the funded projects.

**Capacity building:** Recognising that some municipalities may lack the technical expertise or capacity to implement large-scale infrastructure projects, a portion of the MIG can also be used for capacity-building. This ensures that municipalities can effectively and sustainably implement, operate, and maintain infrastructure projects.

#### **INFORMAL SETTLEMENTS UPGRADING PARTNERSHIP GRANT (ISUPG)**

The Informal Settlements Upgrading Partnership Grant (ISUPG) is a conditional grant that provides funding to municipalities for the upgrading of informal settlements. The funding aims to facilitate a programmatic, inclusive and municipality-wide approach to the upgrading of informal settlements and sets new conditions for provincial departments of human settlements and metropolitan municipalities that will receive this grant.

#### **URBAN SETTLEMENTS DEVELOPMENT GRANT (USDG)**

The USDG provides funding to supplement the funding of functions from municipal budgets of metropolitan municipalities. The funding should be to

implement infrastructure projects that promote equal, inclusive and sustainable urban development.

### **COMMUNITY DEVELOPMENT WORKER PROGRAMME (CDWP)**

This is a national government programme aimed at mobilising communities to:

- Assist with improving service delivery and accessibility of services to communities
- Assist with inter-governmental coordination between government departments
- Facilitate community development and stronger interactions and partnerships between government and communities
- Support participatory democracy

The role of Community Development Workers (CDWs) is to act as a link between Community and Government by informing communities of the government services available while informing government of community needs.

Usually, CDWs are chosen from the communities in which they will work. This ensures they will be familiar with the local issues and needs. CDWs receive training to equip them with the skills to perform their duties effectively.

The responsibilities of CDWs include:

- Information dissemination: CDWs provide communities with information about government services, programs, and projects.
- Facilitation: They help in facilitating access to government services by guiding community members through processes, helping fill out forms, etc.
- Feedback mechanism: CDWs collect feedback from the community regarding the effectiveness and quality of government services and relay this feedback to the relevant government agencies.
- Capacity building: They may also play a role in building capacities within communities, such as organizing workshops, training sessions, and awareness campaigns.

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## **Financial management**

One of the most important duties of a municipal council is to manage its funds effectively. This means:

- Drawing up a budget – working out what income the municipality will receive and balancing this with what they think they will have to spend it on
- Protecting the income, capital and assets, such as money in the bank, motor vehicles, and computer equipment, by putting in proper controls
- Monitoring the actual income and expenditure and comparing this to the budget through regular financial reporting and taking action to correct things when necessary
- Auditing on a regular basis and reporting the financial statements to all stakeholders

### **DRAWING UP A BUDGET**

Municipalities must prepare budgets for each financial year (which runs from 1 July of each year to 30 June of the next year). Council must approve these budgets before the new financial year begins, after proper planning and consultation with ward committees and other stakeholder groups in the area. However, the Council must prepare a draft budget a few months before this to allow for proper consultation to take place.

### **ROLE OF THE WARD COMMITTEE IN DRAWING UP A BUDGET**

Ward committees have the right and duty to ask questions and make recommendations to the council on the best ways to generate (make) income, keep costs down, prevent corruption and protect the assets of the municipality. Approving the budget is one of the most important functions of the ward councillor, who should not approve the budget until there has been proper consultation with the ward committee and other stakeholders. So, ward committees play an important role in the process, and they should look carefully at all the parts of the budget that will affect the people in their area. All members of the community have the right to observe the special council meeting when the budget is debated and voted on.

Ward committees should also be given regular feedback on the 'cash flow' of the municipality. 'Cash flow' means the movement of money into and out of the municipality's bank account.

If too much money is spent and not enough money is raised, then the municipality will eventually go bankrupt. Ward committees have a right to ask questions about how well the 'cash flow' is being planned, monitored and followed up by the

treasurer and executive or mayoral committee. Ward committee members can also play a positive role in the 'cash flow' of the municipality by:

- Setting an example and paying all rates and taxes for services
- Encouraging others to pay their property rates, accounts for water, power, sanitation, etc.
- Challenging any waste of municipal money that they hear about and asking for an investigation
- Making councillors accountable for fighting corruption or wastage of municipal funds

## Community participation in local government

Municipal councils must be accountable to their local communities. In addition, the Constitution says it is important that communities participate in local government. The most important way that communities can participate in local government is through the structure of the ward committee. (See *pg 154: Ward committees*)

There are three Acts of Parliament that can be used to enforce the accountability of local councillors and the local council. These are:

- *Promotion of Access to Information Act* (No. 2 of 2000) gives people the right to have access to any information which the government has if they need it to protect their rights. Officials can only refuse to give information in certain limited situations.
- *Protection of Disclosure Act* (No. 26 of 2000) which protects people who speak out (whistle-blowers) against government corruption, dishonesty or bad administration
- *Promotion of Administrative Justice Act* (No. 3 of 2000) which says all decisions of administrative bodies have to be lawful, procedurally fair and reasonable. People have a right to be given reasons for decisions taken by government officials.

There are different ways that individuals can participate in local government and influence decision-making. (See *pg 92: Democracy, government and Public Participation*)