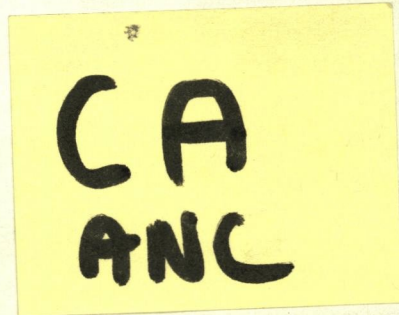


**PART ONE**  
**A QUICK LOOK AT THE CONSTITUTION**



Preamble

This is the introduction to the Constitution.

Chapter 1 - Founding Provisions

This has the basic ideas behind the Constitution; the national symbols (like the flag) that will be used; and the official languages.

Chapter 2 - Bill of Rights

These are the human rights that are protected.

Chapter 3 - Co-operative Government

This chapter says how the National, Provincial and Local levels of government must work together.

Chapter 4 - Parliament

Parliament is the part of the national government which writes new laws for the whole country. It is made up of the National Assembly and the National Council of Provinces.

Chapter 5 - The President and National Executive

The National Executive is the part of national government which puts the laws written by Parliament into operation.

Chapter 6 - Provinces

This chapter says how the Provincial Legislatures and Executives are made up and how they work. It deals with provincial constitutions. It also sets out the areas over which both the national government and the provincial government may make laws and says what happens if these laws do not agree.

Chapter 7 - Local Government

This chapter says how local government is made up and what powers it has.

Chapter 8 - Courts and Administration of Justice

This chapter deals with the courts in South Africa, what powers these have, and how judges are chosen.

Chapter 9 - State Institutions supporting Constitutional Democracy

This chapter sets up institutions to make sure that government does its job properly and to help you protect your rights.

Chapter 10 - Public Administration

This chapter sets out the principles which govern the Public Administration and the people who work for the government.

Chapter 11 - Security Services

This chapter deals with the police, army and intelligence services. It says how



these must work and how the Constitution makes sure that they act properly.

#### Chapter 12 - Traditional Leaders

This chapter deals with traditional leaders.

#### Chapter 13 - Finance

To make sure that the money raised by the government is used properly, this chapter sets out rules that must be followed by the government. It also has the rules for the Financial and Fiscal Commission and the Central Bank.

#### Chapter 14 - General Provisions

This chapter has rules about international agreements and customary international law and says how these will apply in South Africa.

#### Schedule 1

This says what the South African flag looks like.

#### Schedule 2

This has the oaths of office and solemn affirmations which the President, Deputy President, Ministers and so on must swear before they take office.

#### Schedule 3

This deals with how the President, Premiers, Chairperson of the NCOP, Speakers and Deputy Speakers are elected.

#### Schedule 4

This is a list of the areas over which both the National government and Provincial governments can write laws.

#### Schedule 5

These are the areas over which only provincial governments can write laws.

#### Schedule 6

This deals with the changes that have to happen when the Constitution starts to work.

#### Schedule 7

This says what laws are replaced by the Constitution.



**PART TWO**  
**GUIDE TO THE CONSTITUTION**

1. Preamble

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

2 Chapter 1 - Founding Provisions

This chapter deals with the basic principles of the Constitution and the national symbols which will be used.

It says:

- \* South Africa is a multi-party democracy;
- \* the government is elected by the people;
- \* there is separation of powers between the three branches of government (the **Legislature** to write new laws, the **Executive** to put these laws into action and the **Judiciary**, or courts, to decide cases);
- \* the courts are independent;
- \* there is a common South African citizenship; and
- \* the Constitution is the supreme or highest law in the country. Everyone will have to follow the Constitution and any laws that go against the Constitution will be changed or scrapped.

It also deals with:

The **National Flag**. This will be the same as the flag we have now.

The **National Anthem**. The President decides the national anthem.

The **11 official languages**. These will be the same as the languages we have now.

The **9 provinces**. These stay the same.

3. Chapter 2 - Bill of Rights

This chapter has the Human Rights which will be protected. Human Rights are rights and freedoms which we agree that everyone should have simply because they are human beings. These are put in the Constitution:

- \* to make them part of the supreme law so that you can use them in court to protect yourself; and
- \* to make them difficult to change, because a two thirds majority will be needed to change any of these rights.

**But**, you must remember that these rights can sometimes be **limited**:

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

When deciding whether a right can be limited, a court will also look at:

- \* which right it is that is being limited;
- \* why it is being limited and whether the limitation will achieve this purpose;



- \* whether there is another way to achieve this purpose without having to limit the right; and
- \* what the limitation is and how serious it is.

### EXAMPLE

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

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

- a. What rights and freedoms are protected by the Bill of Rights?

### Equality

Everyone is equal and has the right to equal protection and benefit of the law.

No-one, including the government, is allowed to treat you differently to other people (discriminate against you) because of your race, gender, sex, pregnancy, marital status (whether you are married or single), ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth. But **fair** discrimination will be allowed.

### Example:

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

**Affirmative Action** is allowed.

### Human dignity

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

### Life

You have the right to life.

### Freedom and security of the person

- \* You can only be imprisoned if there is a good reason.
- \* You cannot be detained without trial.
- \* Torture is not allowed.



- \* You cannot be treated or punished in a cruel, inhuman or degrading way.
- \* You have the right to be free from all forms of violence, even in your own home. This is to stop people abusing their wives, husbands and children.
- \* You have the right to make decisions about whether you want to have children.
- \* You have control over your body.
- \* You cannot be forced to undergo medical or scientific experiments against your will.

#### Slavery, servitude and forced labour

Slavery and forced labour are not allowed.

#### Privacy

- \* You cannot be searched or have your home or possessions searched.
- \* The government cannot take your things, open your mail or listen to your telephone calls.

#### Freedom of religion, belief and opinion

- \* You can believe or think whatever you want.
- \* You can follow whatever religion you choose.
- \* State institutions (like schools) can follow religious practices (like having prayers in the morning), but this must be done fairly and people cannot be forced to attend them.
- \* You can get married traditionally or under the laws of your religion, as long as these laws do not go against the Constitution.

#### Freedom of expression

You can say whatever you want, and the press too can say whatever they want. But no-one is allowed to spread propaganda for war, or encourage people to use violence.

**Hate speech** is not allowed. Hate speech is spoken or written language which tries to get people to cause harm to other people because of their race, ethnicity, gender or religion.

#### Assembly, demonstration, picket and petition

You can:

- \* gather together with other people;
- \* hold a demonstration;
- \* picket; and
- \* present a petition.

But you must do this peacefully and you cannot carry a weapon.

#### Freedom of association

You can associate with whoever you want to.

#### Political rights

You can:

- \* join a political party;



- \* encourage other people to join this party; and
- \* start your own political party.

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

- \* vote in secret in elections; and
- \* stand for election yourself.

### Citizenship

Your citizenship cannot be taken away from you.

### Freedom of movement and residence

- \* You can go or live wherever you want in South Africa.
- \* You can leave South Africa if you choose and come back at any time.
- \* The government cannot take away your passport.

### Freedom of trade, occupation and profession

You can do whatever work you want.

### Labour relations

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

### Environment

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

### Property

Your property can only be taken away from you by the government if:

- \* the law dealing with this applies to everyone;
- \* it is going to be used for a public purpose or in the public interest (for example, if the government is going to build a dam and your property will be flooded); and
- \* you are paid for your 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. This section says what a court must look at when deciding how much money to pay.

**Land reform** is allowed. If you or your community lost land after 1913 (when laws were passed making it impossible for black people to own land) you can either get the property back or be paid for the land you lost.

If you have been living on land which you were not allowed to own because of laws which did not allow people to own land, you will now be able to own this



land. And the government must try to make sure that everybody gets land.

### Housing

- \* You have a right to have access to housing and the government must try to provide people with proper housing.
- \* You cannot be evicted from your home and your home cannot be broken down unless a court has heard your case.

### Health care, food, water and social security

The government must do things (like passing laws) to make sure that you have:

- \* health care services;
- \* food and water;
- \* social security; and
- \* free medical care in an emergency.

### Children

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

- \* to family care or other care if the child is removed from its family;
- \* to food, shelter and health care;
- \* not to be abused, or neglected; and
- \* not to be forced to work or given work which is not suitable for a child.

### Education

You have the right to free, basic education, including adult basic education, in your own language (if this is possible). The government must try to make sure that people are able to get further education.

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

### Language and culture

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

### Cultural, religious and linguistic communities

Communities can:

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

**But** they must respect other human rights when they do so.

### Access to information

- \* You have the right to any information which the government has.



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

#### Just administrative action

- \* Administrative action must be allowed by the law, it must be reasonable, and the procedures used must be fair.
- \* You can ask for written reasons for any decision that is made which affects you.

#### Access to Courts

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

#### Arrested, Detained and Accused Persons

This section sets out the rights which people have who have been arrested, imprisoned or accused of committing a crime. They include the right:

- \* to keep silent;
- \* not to be forced to make a confession;
- \* to be taken to court within 2 days of your arrest;
- \* to be released, either on warning or on bail, unless there is a good reason to keep you in jail;
- \* to be given a lawyer paid for by the government if you cannot afford a lawyer and injustice might happen if you are not given a lawyer;
- \* to be kept in proper conditions and to be given free food, something to read and medical treatment; and
- \* to speak to and be visited by your husband, wife or partner; your family; a religious counsellor; and your own doctor.

If the government gets evidence against you by going against one of your rights, this evidence will not be allowed in court if it would be unfair, or if it would damage the administration of justice.

#### Example

The police think you have dagga at home. They torture you until you tell them where the dagga is. They will not be able to use this in court, because the Bill of Rights says you cannot be tortured.

#### b. Do people have to follow the Bill of Rights?

The Bill of Rights works to stop the government from abusing the rights of the people. Sometimes the Bill of Rights says which rights work between the government and the people, and which rights work between people as well. For example, the section on **Equality** clearly says that people cannot discriminate against each other. If the Bill of Rights does not say this, it is usually left to the courts to decide which rights work between people.

#### c. Who can take a case involving the Bill of Rights to court?

You can take a case involving the bill of rights to court when:

- \* you do so for yourself (for example, if your rights are being affected);



- \* you do so for another person who cannot take the case to court (for example, someone who is being kept in detention in a way which is not allowed by the Bill of Rights and who cannot get to court);
- \* you are a member of a group, or when you are acting for a group of people (this is known as a "class action"); or
- \* you are acting for the benefit of the public.

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

#### 4. Chapter 3 - Inter-governmental Co-operation

There are 3 spheres (levels) of government in South Africa. These are the **national**, **provincial** and **local** spheres. Each of these must be loyal to South Africa and must respect the other spheres. Each sphere only has the powers set out for it in the Constitution.

Government in each sphere must co-operate with other government in the same sphere, and government in other spheres.

#### 5. Chapter 4 - Parliament

Parliament is also known as the **National Legislature**. It writes all new laws for South Africa, and changes any old written laws which need to be changed. The laws written by Parliament are called **Acts of Parliament** and these must be followed by everyone in South Africa, no matter where they live.

Parliament is usually only the **National Assembly**. But when it is writing or changing laws which will affect the provinces, Parliament is both the National Assembly and the **National Council of Provinces**.

##### a. The National Assembly (NA)

The NA is elected during national elections. Chapter 4 says:

- \* there are between 350 and 400 members of the NA;
- \* who can be a member and how members are chosen;
- \* the NA meets in Cape Town (also called the **seat of Parliament**);
- \* the NA serves for 5 years after it is elected (also called a **term**);
- \* when and how the NA can come to an end (be "dissolved") before this 5 year term is finished; and
- \* decisions are made in the NA by voting.

##### b. National Council of Provinces (NCOP)

The NCOP has replaced the Senate. It is made up of 10 delegates from each of the provinces. The NCOP represents the provinces at the national level. Chapter 4 says:

- \* there are 6 permanent delegates and 4 part-time delegates;
- \* how these delegates are chosen;
- \* the NCOP meets at the same place as the NA;



- \* how the Chairperson and Deputy Chairperson are chosen; and
- \* that decisions are made by voting.

c. How laws are written by Parliament

Before a law is passed by Parliament, it is called a **Bill**. Because the NCOP represents the provinces, it is only involved when Parliament is writing laws about something which the provinces are also allowed to write laws about. The areas about which both Parliament and the provinces can write laws are set out in **Schedule 4** of the Constitution. (A schedule is a document attached to the end of the Constitution and is a part of the Constitution). They include areas such as:

- \* agriculture;
- \* casinos;
- \* cultural matters;
- \* education;
- \* health services;
- \* housing;
- \* nature conservation;
- \* roads;
- \* tourism; and
- \* welfare services.

(For the full list, please look at Schedule 4 of the Constitution).

**All** bills must first be agreed to by the NA. If the bill is about something which is **not** listed in Schedule 4, the NCOP can only look at the bill and make comments or suggestions. The NA must look at these, but it does not have to follow these comments or suggestions for the bill to be passed.

If the bill is about one of the areas in Schedule 4, it must be agreed to by both the NA and the NCOP. If they do not agree, the bill cannot be passed. Instead, it must be sent to a **Mediation Committee**. This committee is made up of the same number of members from the NA and the NCOP. There are 9 members from the NA and one member from each of the 9 provinces. (The rules about how the Mediation Committee works are in Chapter 4 of the Constitution).

Once a bill has been passed, either by the NA or by both the NA and the NCOP when this is necessary, it is then sent to the **President**. The President then signs the bill and publishes it in the **Government Gazette**. The bill is now law and is called an **Act of Parliament**.

d. How the Constitution can be changed (amended)

The Constitution can only be amended if at least two thirds of the NA agree. The NCOP will also be involved if the amendment changes:

- \* the NCOP;
- \* the borders, powers, functions or institutions of provinces; or
- \* any part of the Constitution which deals with provincial issues.



In this case, the delegates from at least 6 provinces must agree to the changes. If the changes only affect some provinces, then they must also be passed by the legislatures of those provinces.

If the changes affect the borders, powers or functions of provinces, it must first be sent to the provincial legislatures for their comments.

Section 1 (which sets out the basic principles of the Constitution) can only be changed if **three quarters (75%)** of the NA agree.

e. What happens if a new law is, or might be, unconstitutional?

- \* If the President thinks a Bill is unconstitutional (not allowed by the Constitution), the President can refuse to sign it and can 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 (CC) for the CC to say whether or not the law is unconstitutional.
- \* If the CC is satisfied with the Bill, the President must sign it.

6. Chapter 5 - The President and the National Executive (NE)

The NE is also known as the **Cabinet**. It is the body which puts laws made by Parliament (Acts of Parliament) into operation. It is made up of the **President**, a **Deputy President**, and the **Ministers**.

There is one Minister to deal with each area that a government controls. Each of these Ministers has a staff to make sure that the work is done. This staff make up a **Department**.

The Ministers make sure that the policies of the government are followed. But they cannot make their own laws. They have to follow the laws which are written by the Legislature, and they have to account to the Legislature for what their departments do. In this way, the Executive is controlled by the Legislature.

This chapter says:

- \* what powers the President has;
- \* the President is chosen by the NA;
- \* how long the President is allowed to serve;
- \* how the President can be removed from office\*;
- \* how the Cabinet is made up and how it is chosen;
- \* that Deputy Ministers can be chosen to help the Ministers;
- \* that the Cabinet must account to Parliament;
- \* that members of the Cabinet must follow a code of conduct which is set out in an Act of Parliament;
- \* what happens if the National Assembly passes a vote of no-confidence in the Cabinet (this is explained below); and



\* that Ministers are not allowed:

- to do any other work for money;
- to do anything that will conflict with their positions as Ministers; or
- to use their positions to make themselves or their friends richer.

Note: The rules about the NE in the new Constitution are different to the rules in the Interim Constitution. But, the Interim Constitution says the NE has to stay the same until the next election. The next election cannot be held before 30 April 1999. So the rules about the NE in the new Constitution will only start working after the elections in 1999.

a. How long can the President serve?

The President is not allowed to serve (be President) for more than two terms. A term is the period between elections, that is 5 years. But if a person becomes President because the previous President resigns, dies or is removed from office, the period up to the next election does not count as a term.

Example:

President Sithole is elected during the 1999 elections. President Sithole's first term of office will last until the next election in 2004. But President Sithole resigns in 2001 and a new President, President Moseneke is chosen to fill the gap. President Moseneke will be allowed to be elected President in the 2004 elections, and again during the elections in 2009, because the period from 2001 to 2004 is not regarded as a term. But, President Moseneke will not be able to be elected President again in 2014, because by then President Moseneke will have served two full terms.

b. Motion of No Confidence

**Motions of no confidence** are a way for a Legislatures to tell an Executive that they do not agree with the way they are doing things. It is a way to make sure that the Executive does not have too much power and that it is accountable to the Legislature.

If the NA passes a motion of no confidence in the **Cabinet, but not the President**, the President must choose a new Cabinet.

If the NA passes a motion of no confidence in the **President**, the President and the rest of the Cabinet must resign.

7. Chapter 6 - Provinces

Each Province has its own provincial government, made up of a **Provincial Legislature** (to write laws) and a **Provincial Executive** (to put these laws into operation). This chapter deals with both of these, with **provincial constitutions**, and what happens when laws passed by a provincial legislature go against those



passed by Parliament.

a. Provincial Legislatures

Provincial legislatures write laws for their province. These are called **provincial Acts**. Only people living in the province and people visiting it will have to follow these laws.

This chapter says:

- \* who can be a member of a provincial Legislature;
- \* how these members are chosen;
- \* these members serve for a 5 year term;
- \* how a provincial Legislature can be dissolved before the end of its term; and
- \* how these will make laws for their provinces and what laws they are allowed to make.

b. Provincial Executives

Provincial executives are called **Executive Councils**. This chapter says:

- \* Premiers (who are the leaders of Executive Councils) are chosen by the provincial legislatures;
- \* how long a Premier may serve;
- \* that the Executive Council of a province is made up of the Premier and between 5 and 10 other members.
- \* that the Executive Council must account to the provincial Legislature;
- \* there is a code of conduct for members of the Executive Councils which is set out in an Act of Parliament; and
- \* what happens when there is a vote of no confidence.

c. Provincial Constitutions

A provincial legislature can write a constitution for its province. To do this, at least two-thirds of the members of the Provincial Legislature must agree.

A provincial constitution cannot go against anything in the national Constitution (that is, our new Constitution), but it can:

- \* set up different legislative and executive structures and procedures to those in the national Constitution; and
- \* allow a traditional king or queen.

However, these cannot go against Chapter 3 or the values in Section 1 of the national Constitution, and they cannot give a province more powers than they are given by the national Constitution.

Before a provincial constitution can start to work, the Constitutional Court will check that the rules of the provincial constitution do not go against the national Constitution.



d. What if the laws of a province (provincial Acts) conflict with national legislation (Acts of Parliament)?

In addition to writing a constitution for their province, provincial legislatures will write provincial Acts for their provinces. These provincial Acts cannot go against the Constitution.

The Constitution says that there are some areas over which **only** provincial legislatures will be able to write laws. These are set out in Schedule 5.

But, there is a list of areas in Schedule 4 of the new Constitution over which **both** the provincial **and** the national legislatures can write laws.

If a province writes a provincial Act over one of the areas in Schedule 4 which goes against an Act of Parliament, the Act of Parliament will be followed as long as it:

- \* applies to the whole country in the same way;
- \* has been passed by **both** the NA and the NCOP;
- \* deals with something that cannot be dealt with by provinces individually;
- \* deals with norms and standards, frameworks or national policies which need to be dealt with in the same way across the country;
- \* is necessary to:
  - protect national security;
  - protect economic unity;
  - protect the common market;
  - promote economic activity across provincial boundaries;
  - promote equal opportunity;
  - promote equal access to government services;
  - protect the environment; or
- \* is trying to stop a province doing something which harms another province or the whole country.

If the Act of Parliament is not for one of these reasons, then the provincial Act will be followed.

The same rules follow if the Act of Parliament deals with something in Schedule 4, and this Act of Parliament conflicts with a **provincial constitution**. If the Constitution says that an issue must be dealt with by an Act of Parliament, and this Act of Parliament conflicts with a **provincial constitution**, then the Act of Parliament will be followed.

Lastly, if the Constitutional Court cannot decide whether the provincial Act or the Act of Parliament should be followed, then the Act of Parliament will be followed.

## 8. Chapter 7 - Local Government

Local governments deal with issues which affect the local area or **municipality** that they control. This includes electricity, fire fighting, traffic and parking and many other things.



Each municipality has a **Municipal Council**, which is both the Legislature and the Executive for that municipality.

Laws written by a Municipal Council are called **By-Laws\***. They have to be followed by everyone living in or visiting a local area while they are in that local area. By-laws cannot go against:

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

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

## 9. Chapter 8 - Courts and Administration of Justice

The courts, judges and magistrates are known as the **Judiciary**. The Judiciary is independent and must see to it that the laws of the country are followed by everyone, including the government.

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

- \* the Constitutional Court;
- \* the Supreme Court of Appeal (which used to be called the Appellate Division);
- \* the High Courts (which used to be called the Supreme Court);
- \* Magistrate's Courts; and
- \* other courts set up by an Act of Parliament (such as the Industrial Court and the Small Claims Court).

### a. The Constitutional Court (CC)

The CC has a President, a Deputy President and nine other judges. It is the highest court for constitutional cases and all other courts must follow its decisions.

These are the cases which **only** the CC can decide:

- \* where there is a disagreement between national government structures;
- \* where there is a disagreement between a national and a provincial government structure;
- \* where there is a disagreement between provincial organs of state;
- \* whether laws passed by the National or Provincial governments are unconstitutional;
- \* whether anything done by the President is unconstitutional;
- \* whether a Bill which is being decided by the National or a Provincial Parliament will be unconstitutional if it is passed.

### Example

If there is a disagreement between the national Department of Education and a Provincial Department of Education, only the CC can make a decision about who



is correct.

Usually, this court will only decide a case if it is an **Appeal\***. An appeal is when you are not happy with the decision of the court which heard your case and you ask a higher court to decide the case again). But, this court must allow people to take their cases straight to the CC (without first having to have the case decided by a lower court) if this is necessary.

b. Powers of other courts deciding Constitutional cases

If you have a case in

- \* the Supreme Court of Appeal; or
- \* a High Court (or a court with similar powers),

this court **cannot** decide that an Act of Parliament, an Ordinance or the conduct of the President is unconstitutional, because only the CC can do this. But these courts can give you temporary help until the case is decided by the CC.

If a court does something like this, it will be up to the CC to make a final decision on whether the law or conduct of the President is constitutional or not.

Example

An Ordinance says only women can be employed as teachers and male teachers must be fired. A male teacher takes his case to the High Court. The High Court cannot scrap this law. But the judges of the High Court can say that they think the law is unconstitutional and they can decide that the teacher cannot be fired until the CC has decided whether the law is constitutional or not.

This chapter also:

- \* says how judges are chosen;
- \* says when a judge can be removed from office; and
- \* sets up a Judicial Services Commission and says what powers this has.

10. Chapter 9 - State institutions supporting Constitutional Democracy\*

The institutions to protect people from abuse by the government and to make sure that government does its work properly are set out in this chapter. They are:

a. The Public Protector

The Public Protector investigates complaints about government officials, like pension payout clerks. The Public Protector will try to solve the problem or will refer it to someone who can.

b. Human Rights Commission

This Commission promotes respect for and protects human rights. It will educate people about human rights. It can investigate complaints about human rights abuses and bring court cases about these.



c. Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities

This commission is to:

- \* promote respect for the rights of cultural, religious and linguistic communities (communities with a common language);
- \* promote and develop peace, friendship, humanity, tolerance and national unity amongst the different communities in South Africa; and
- \* recommend that cultural councils are set up for different communities.

d. Commission for Gender Equality

This Commission can investigate and challenge laws, practices and customs that discriminate against people because of their gender. It can also monitor, educate and lobby for things like changing laws.

e. Auditor-General

The Auditor-General audits (checks) the accounts of all levels of government. The Auditor-General is not allowed to work for a political party.

f. Electoral Commission

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

g. Independent authority to regulate broadcasting

There must be an Act of Parliament to make sure that radio and television broadcasts are fair and that they represent the views of South African society.

11. Chapter 10 - Public Administration

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

This chapter does not go into lots of detail, but says that government will write laws to make sure that these principles are followed.

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

12. Chapter 11 - Security Services

This chapter deals with the Security Services for South Africa. These are the police force, defence force, and different intelligence services.



Members of these services are not allowed to follow an order which is obviously illegal.

The security services are there to protect the people and the country. They are not allowed to act for or against a political party.

a. The Defence Force

The **South African National Defence Force (SANDF)** protects South Africa and all South Africans and is the only **military** force in South Africa, but Acts of Parliament can set up other **armed** forces.

There is a Minister and a multi-party Committee of Parliament to oversee the defence force.

The President chooses the Chief of the Defence Force. The Chief of the Defence Force must follow the instructions of the Minister.

There is a secretariat made up of civilians (that is, people who are not part of the defence force). Their role is set out in an Act of Parliament, or by the Minister.

b. The Police

The **South African Police Services (SAPS)**:

- \* prevents and investigates crime;
- \* maintains public order; and
- \* protects the safety and security of South Africa and all South Africans.

Its powers and functions are set out in an Act of Parliament.

The police are controlled by a Minister and a multi-party Committee of Parliament.

The **National Commissioner of Police** is chosen by the President, and is controlled by the Minister. There are also Commissioners for each province. These are chosen and controlled by the National Commissioner.

Provincial governments must monitor and oversee the police in their province.

There is a secretariat made up of civilians. Their role is set out in an Act of Parliament, or is decided by the Minister.

c. Intelligence

The President is responsible for intelligence services, but can choose a Minister of the Cabinet to be responsible for them. The President appoints the heads of these services.

The powers and functions of the intelligence services are set out in an Act of Parliament, which:



- \* deals with the coordination of all intelligence services (including those in the police and defence forces);
- \* sets up a committee of Parliament to check their budgets; and
- \* provides for a civilian inspector or inspectors to monitor their activities.

### 13. Chapter 12 - Traditional Leaders

Traditional leaders are recognised and allowed to continue under indigenous law. (These are the laws which have been used in South Africa since before the settlers arrived).

Courts must use indigenous law where it is applicable, but this law must also follow the Constitution.

Acts of Parliament or provincial Ordinances can set up councils of traditional leaders to deal with things of common interest.

### 14. Chapter 13 - Finance

This chapter says how the money raised by the government must be dealt with. It says:

- \* there is a **National Revenue Fund**. All money raised by the National government (from taxes, fines, etc) or given to the government (for example, a donation by another government) must be put into this Fund. National, Provincial and Local governments will get their money from this fund;
- \* any money received by provinces must be put into their **Provincial Revenue Funds**;
- \* that National, Provincial and Local governments must draw up budgets showing how much money they will need each year and how they will spend this money;
- \* there is a **National Treasury** to control how money is spent;
- \* what rules must be followed when the government spends this money;
- \* that Acts of Parliament must deal with how much members of all the branches and all the levels of government are paid;
- \* what taxes, levies and duties Provincial Governments can charge;
- \* what rates and taxes local governments can charge; and
- \* what rules must be followed when Provincial or Local governments take out loans.

There is a **Financial and Fiscal Commission** to advise any level of government about their money. It must regularly report to Parliament and the Provincial Legislatures.

Lastly, there is a **South African Reserve Bank** to protect the value of South African money.

### 15. Chapter 14 - General Provisions

This chapter deals with:

- \* international agreements;



\* customary international law; and  
\* international law.