



Wes-Kaapse Proviniale Parlement
Western Cape Provincial Parliament
IPalamente yePhondo leNtshona Koloni

CELEBRATING 20 YEARS
OF THE CONSTITUTION

FACT SHEET 18

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Celebrating
20 years
of the Constitution and
20 years since the
establishment of the NCOP

INTRODUCTION

- This year marks the 20th anniversary of the South African Constitution.
- The Constitution is the supreme law of the land. No other law or government action can supersede the provisions of the Constitution.
- South Africa's Constitution is one of the most progressive in the world and enjoys high acclaim internationally.
- Our Constitution sets out how all the elements of government are organised and it contains rules about what power is wielded, who wields it and over whom it is wielded in the governing of the country.

BACKGROUND

- The Constitution was signed into law by former President Nelson Mandela in Sharpeville on 10 December 1996 and came into operation on 4 February 1997.
- The signing of the Constitution in Sharpeville was a commemorative gesture in remembrance of the people who died during a peaceful demonstration against the vicious pass laws on 21 March 1960. As President Mandela described it, the signing of the Constitution in Sharpeville marked the closure of a chapter of exclusion and a reaffirmation of our determination to build a society of which all of us can be proud.
- The drafting of the Constitution was the result of protracted deliberations and negotiations between various political parties and interest groups in South Africa. It was subjected to intensive scrutiny by the Constitutional Court, which was established in terms of the 1993 Interim Constitution.

- The signed Constitution came into operation on 4 February 1997 and has since then drastically transformed the legal, political, social and economic landscape of the country.
- A constitution is a body of fundamental principles according to which a state is to be governed. In South Africa, the Constitution is the supreme law of the land and all other pieces of legislation must align with its provisions.
- The Constitution provides, among others, the legal foundation for the existence of the Republic, the rights and duties of its citizens and it defines the structure of the government.

CHAPTER 1 OF THE CONSTITUTION

- Chapter 1 of the Constitution contains the founding provisions and provides that the Republic of South Africa is one sovereign, democratic state founded on the following values:
 - human dignity, the achievement of equality and the advancement of human rights and freedoms;
 - non-racialism and non-sexism;
 - supremacy of the Constitution; and
 - the rule of law.
- Universal adult suffrage, a national common voters' roll, regular elections and a multi-party system of democratic government exist to ensure accountability, responsiveness and openness.
- Chapter 1 further provides for the supremacy of the Constitution, citizenship, the national anthem, the national flag and the official languages of our country.
- Constitutions and constitutionalism go hand in hand with human rights. Rights are often entrenched in a special part of a constitution, called a bill of rights.

CHAPTER 2 OF THE CONSTITUTION

- The Bill of Rights (Chapter 2 of the Constitution) is the cornerstone of South Africa's democracy. It enshrines the rights of all people in South Africa and affirms the democratic values of human dignity, equality and freedom.
- The Bill of Rights binds Parliament, the executive, the judiciary and all organs of state. The rights contained in the Bill of Rights are subject to the limitations contained in or referred to in section 36 of the Constitution, or elsewhere in the Bill of Rights.
- The constitutional goals are primarily set out in the preamble, where it is stated that the Constitutional Assembly adopted the Constitution so as to:
 - heal the divisions of the past;
 - establish a society based on democratic values, social justice, and fundamental human rights;
 - lay the foundations of a democratic and open society;
 - ensure that the government of the country is based on the will of the people;
 - have every citizen equally protected by law;
 - improve the quality of life;
 - free the potential of each person;
 - build a united and democratic South Africa; and
 - enable the country to take its rightful place in the family of nations.

CHAPTER 3 OF THE CONSTITUTION

- Chapter 3 of the Constitution sets out the organs of government. In the Republic, the government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated.
- All spheres of government must observe and adhere to the principles that the Chapter provides and must conduct their activities within those parameters.
- It sets out the set of principles of cooperative government and intergovernmental relations which include, among others, preserving the peace, national unity and the indivisibility of the Republic, securing the well-being of the people of the Republic and providing effective, transparent, accountable and coherent government for the Republic as a whole.

CHAPTER 4 OF THE CONSTITUTION

- Chapter 4 defines the structure of Parliament, the legislative branch of the national government.
- Parliament consists of the National Assembly and the National Council of Provinces.
- The National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinising and overseeing executive action.
- The National Council of Provinces represents the provinces to ensure that provincial interests are taken into account in the national sphere of government. It does this mainly by participating in the national legislative process and by providing a national forum for public consideration of issues affecting the provinces.

CHAPTER 5 OF THE CONSTITUTION

- Chapter 5 outlines the structure of the national executive and the powers of the President.
- The President is the head of state and head of the national executive and must uphold, defend and respect the Constitution as the supreme law of the Republic and promote the unity of the nation and that which will advance the Republic.
- The President has the powers entrusted by the Constitution and legislation, including those necessary to perform the functions of head of state and head of the national executive.
- The President is responsible for, among others, assenting to and signing bills, referring a bill back to the National Assembly for reconsideration of the bill's constitutionality and appointing commissions of inquiry.

CHAPTER 6 OF THE CONSTITUTION

- Chapter 6 establishes the nine provinces of South Africa and defines the powers and structure of the provincial governments.
- The Republic has the following provinces:
 - Eastern Cape;
 - Free State;

- Gauteng;
- KwaZulu-Natal;
- Limpopo;
- Mpumalanga;
- Northern Cape;
- North West; and the
- Western Cape.

CHAPTER 7 OF THE CONSTITUTION

- Chapter 7 sets out the guideline for local government and its municipalities.
- The local sphere of government consists of municipalities, which must be established for the whole of the territory of the Republic.
- The executive and legislative authority of a municipality is vested in its municipal council.
- A municipality has the right to govern, on its own initiative, the local-government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution.
- The national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.
- The objectives of local government is, among others, to provide democratic and accountable government for local communities, to ensure the provision of services to communities in a sustainable manner, to promote social and economic development and to promote a safe and healthy environment.

CHAPTER 8 OF THE CONSTITUTION

- Chapter 8 of the Constitution determines the courts and administration of justice through the judicial system and the judicial authority.
- It defines the hierarchy consisting of Magistrate's Courts, the High Court, the Supreme Court of Appeal, and the Constitutional Court.
- It provides for the appointment of judges by the President on the advice of the Judicial Service Commission and it establishes a single National Prosecuting Authority responsible for all criminal prosecutions.

CHAPTER 9 OF THE CONSTITUTION

Chapter 9 highlights the state institutions that strengthen the constitutional democracy in the Republic. These state institutions include:

- Public Protector;
- South African Human Rights Commission;
- Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities;
- Commission for Gender Equality;
- Auditor-General; and
- Electoral Commission.

CHAPTER 10 OF THE CONSTITUTION

- Chapter 10 highlights public administration that must be governed by the democratic values and principles enshrined in the Constitution. These principles include:
 - 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 must be cultivated to maximise human potential.
- Public administration must broadly be 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.

CHAPTER 11 OF THE CONSTITUTION

- Chapter 11 establishes structures for civilian control of the defence force, the police service and the intelligence service.
- It makes the President the commander-in-chief of the defence force, but places conditions on when and how it may be employed, and requires regular reports to Parliament.
- The police service is placed under the control of the national government but gives provincial governments some power to administer and oversee policing.

CHAPTER 12 OF THE CONSTITUTION

- Chapter 12 recognises the status and authority of traditional leaders and customary law, subject to the Constitution.
- It allows for the creation of provincial houses of traditional leaders and a national council of traditional leaders.
- National legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities.
- To deal with matters relating to traditional leadership, the role of traditional leaders, customary law and the customs of communities observing a system of customary law, a national or provincial legislation may provide for the establishment of houses of traditional leaders and national legislation may establish a council of traditional leaders.

CHAPTER 13 OF THE CONSTITUTION

- Chapter 13 deals with public finance.
- It establishes a National Revenue Fund, from which money may be appropriated only by an act of Parliament, and Provincial Revenue Funds, from which money may only be appropriated by an act of the provincial legislature.
- It provides for an equitable distribution of national revenue to the provinces and municipalities, and grants provincial and local governments the powers to raise certain rates and taxes.
- It requires effective and transparent budgeting at all levels of government and gives the National Treasury the power to oversee budgetary processes.
- It places some restrictions on government procurement and government borrowing. The chapter establishes the Financial and Fiscal Commission (to advise the government on financial matters) and the Reserve Bank (to oversee the currency).

CHAPTER 14 OF THE CONSTITUTION

- The final chapter deals with transitional and incidental provisions. In particular, the first part of the chapter deals with international law, providing that existing agreements binding South Africa will continue to bind it, and that new agreements (except those of a technical nature) will only be binding once approved by Parliament.
- It also provides that customary international law applies in South Africa unless it conflicts with national law, and that the courts must, where possible, interpret national law to be consistent with international law.