

SECOND EDITION

EDUCATION TOWARD A RIGHTS CULTURE



**DEMOCRACY  
FOR ALL**









# DEMOCRACY FOR ALL

EDUCATION TOWARDS A DEMOCRATIC CULTURE

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SECOND EDITION

written by

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**David McQuoid-Mason**

**Lindi Coetzee**





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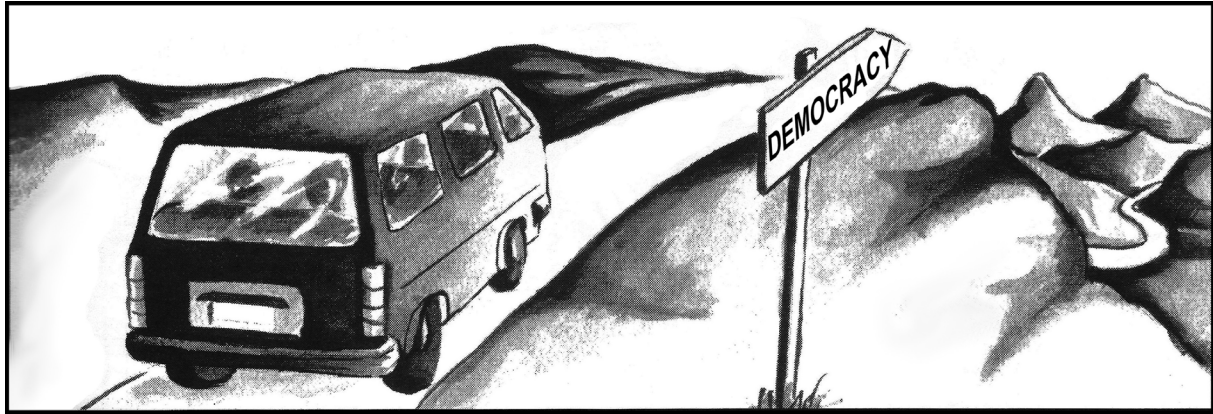
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# 1. WHAT IS DEMOCRACY?



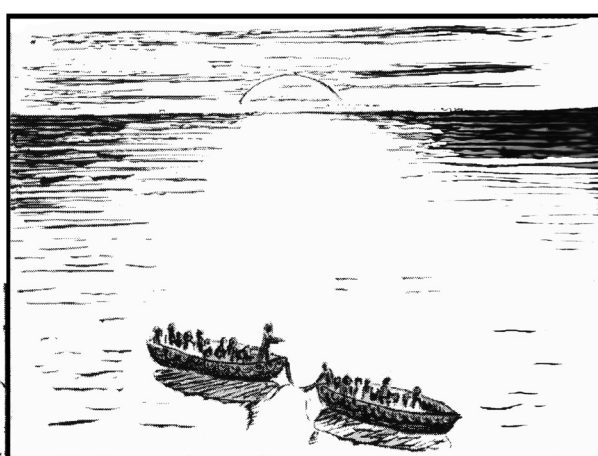
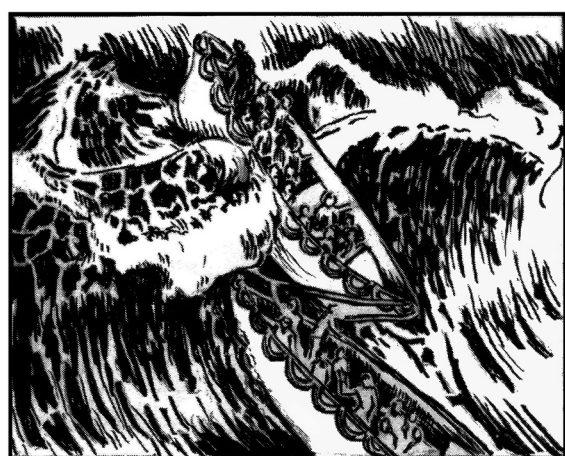
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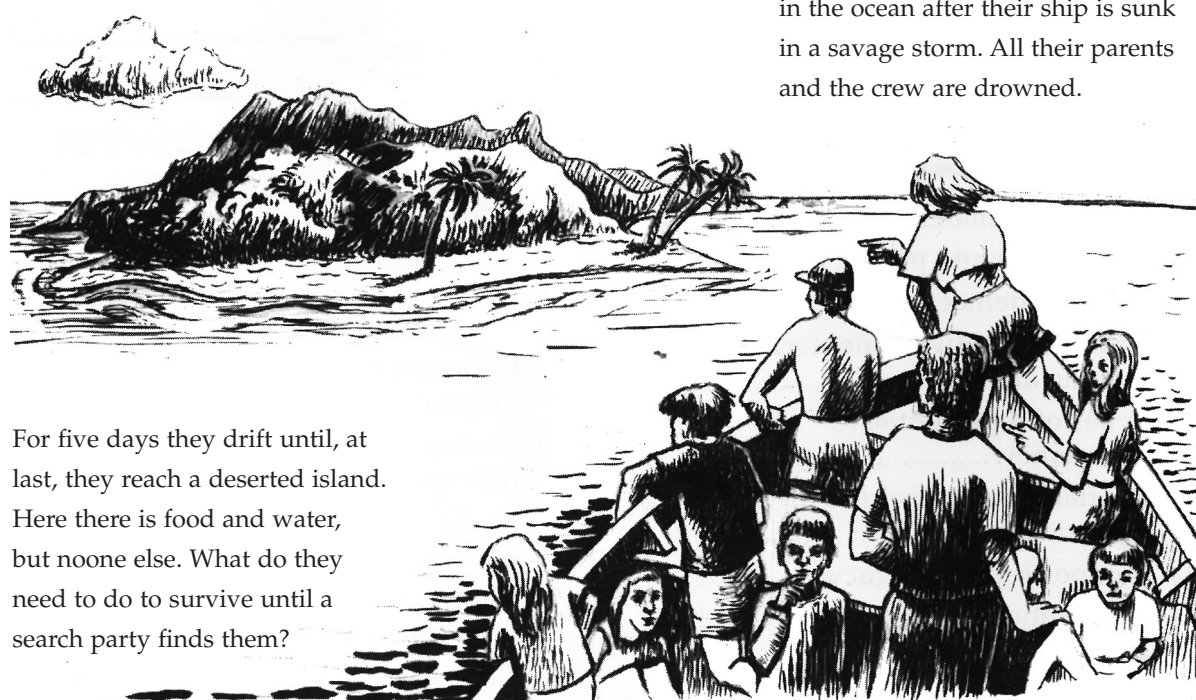
## OBJECTIVES

After reading this chapter you should be able to—

1. describe a democratic government and tell how it differs from a dictatorship;
2. compare legitimate and illegitimate governmental power;
3. distinguish between the different types of democracy;
4. name the fundamental principles of democracy;
5. discuss your expectations concerning democracy;
6. decide if you think democratically.



Twenty-six young people – six teenagers and 20 children – are adrift in the ocean after their ship is sunk in a savage storm. All their parents and the crew are drowned.



For five days they drift until, at last, they reach a deserted island. Here there is food and water, but no one else. What do they need to do to survive until a search party finds them?



Everyone agrees that there should be rules so that they can get on with each other and live safely. But who is to make the rules? Peter, aged 17, is the first to speak.



**Anna (16) disagrees:**

*Everyone, even the younger kids, should decide on, and agree to, every rule! Their opinions count too. Everyone must help. And we don't need bossy people giving us orders!*



**Ravi (15) has a different view:**

*There are too many of us for everyone to take part in every decision! We'll spend all our time talking! We should rather elect people to represent us. Anyone can be a representative, but they must be elected.*



**Mse (14) doesn't feel that the younger children are old enough to make decisions:**

*I say let the teenagers vote and make the rules for the younger kids.*



## EXERCISE 1

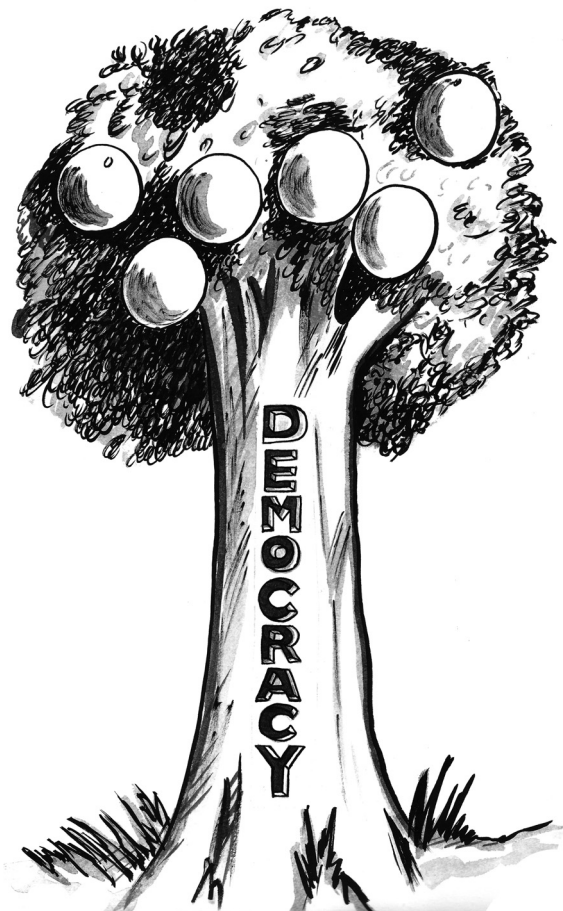
### Who will govern the shipwrecked children?

1. Role-play the different teenagers making their arguments.
2. What are the advantages and disadvantages of each person's suggestion?
3. Whose suggestion do you agree with most? Give your reasons.
4. Which suggestion do you think results in government that can be called democratic? Give reasons for your answer.

## EXERCISE 2

### Drawing a Democracy Tree: What does democracy mean to you?

1. Draw a Democracy Tree with the word 'democracy' written on its trunk.
2. What are the fruits or benefits of democracy?
3. Draw six fruits of democracy hanging from the branches of the tree, and label them.



#### WHERE YOU LIVE

DO YOU THINK  
YOUR COUNTRY  
IS A  
DEMOCRACY?

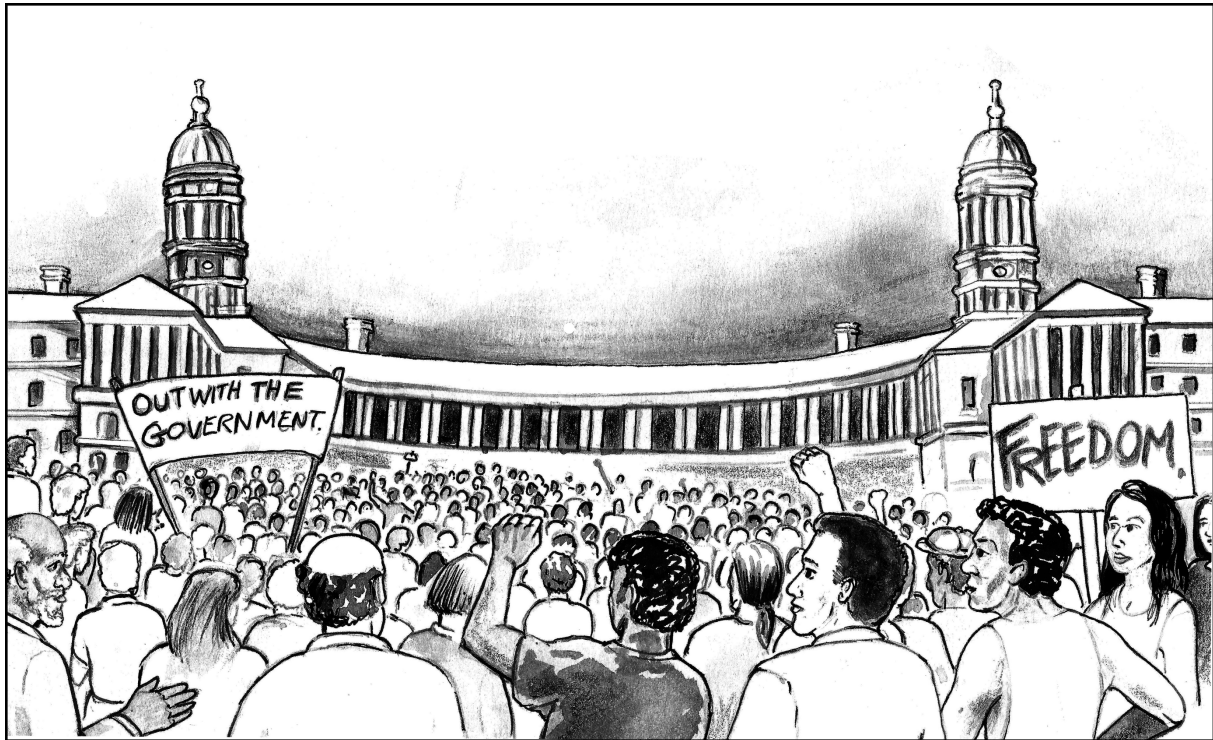
## 1.1 DEFINING DEMOCRACY

**W**hat is democracy? Democracy comes from the Greek words *demos* meaning 'the people', and *kratos* meaning 'authority'. There are many definitions of democracy, such as: 'government which is conducted with the freely given consent of the people'; or 'a system of government in which supreme authority rests with the people'. The most common definition is 'rule by the people'. This chapter will explore the different types of democracy and the fundamental principles upon which democracy is based.

## 1.2 DEMOCRACY AND POWER

**G**enerally, power is the ability to cause others to change their behaviour and to do what the powerholder wants. Democracy is an organised system of power. The word 'power' in this instance means the government has the capacity to control and influence people's behaviour and activities. In a democracy, the government receives its power from a mandate of its citizens. This democratic mandate gives the government the power to govern by passing and enforcing laws. The government passes laws that are usually defined in a constitution. It enforces laws by controlling the military, the police and the courts. For example, judges have the power to sentence criminals to imprisonment. This power comes from recognition, by the citizens, that this is one of the responsibilities of a judge.





*An illegitimate government will usually be challenged by the citizens by engaging in riots, protest and civil disobedience.*

In a democracy the citizens agree to be ruled by the government because they think that it is best to do so. In other words, they see the government and its laws and actions as the exercise of legitimate power. A government has legitimate power when its citizens accept and respect it, and view the laws it passes as just and moral. Power is illegitimate when it is not recognised and accepted by the majority of those who are governed. An illegitimate government will usually lack popular support and its laws and actions are often challenged by the citizens through riots, protests and other acts of civil disobedience, as happened in South Africa under apartheid. Legitimacy is therefore the cornerstone of power. Without legitimacy the government can lose support from its citizens.

Governments may also lose their legitimacy if they keep breaking their election promises or fail to deliver services such as housing, health, water, electricity, education and pensions, when required to do so by the Constitution or the laws of the country.

Sometimes, although governments have been elected democratically, large national and multinational business firms are able to influence the policies of the government because of the amount of wealth that they control. These influences may be used to prevent or advance the social justice agenda of governments.

**EXERCISE 3**

**Who has power?**

A newly elected democratic government is overthrown by the army, which is led by supporters of the former government, which lost the election. Soon after taking power, the military rulers pass laws to increase taxes by 20% and to double the petrol price. The citizens reject the new increases. They loot and burn petrol stations and destroy government property.

1. Who has power? The government or the people?
2. Is the power legitimate or illegitimate?

**1.3 TYPES OF DEMOCRACY**

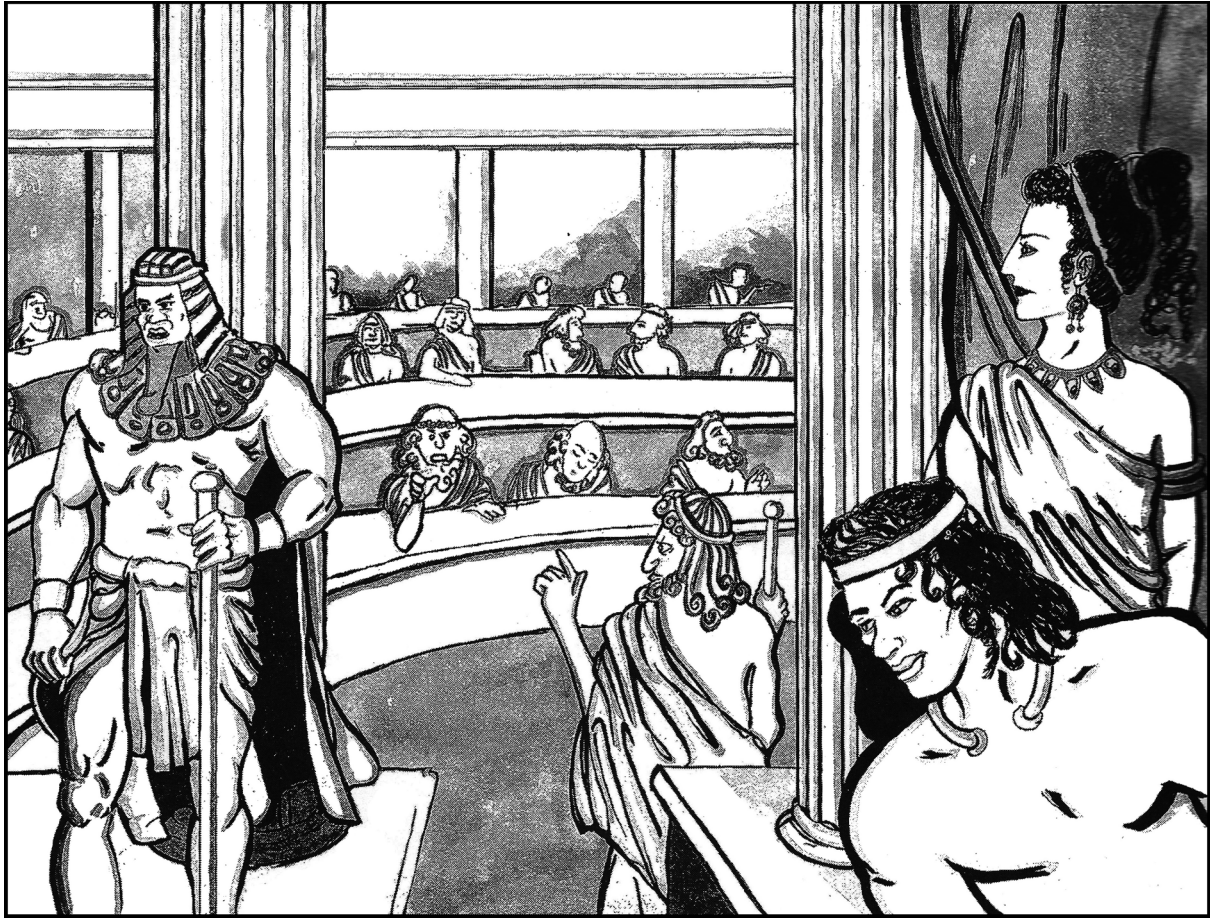
**WHERE YOU LIVE**

**DOES YOUR  
COUNTRY HAVE A  
DIRECT OR  
REPRESENTATIVE  
DEMOCRACY?**

There are two main types of democracy: 1) direct democracy and 2) indirect or representative democracy. To understand the difference between a direct and a representative democracy, it is useful to look at examples.

**1.3.1 DIRECT DEMOCRACY**

The ancient Greeks in Athens, more than 2 000 years ago, practised one of the first direct democracies. Direct democracy means personal rule by the people. Most of the day-to-day governing was carried out by a council of 500 citizens. All important issues, even if decided by the council, were put before an assembly of all citizens for a vote. One in six citizens held some type of public office in any given year. Positions were usually held for one year only, making it likely that every citizen would hold office at least once. The idea of rotating city officials meant that nobody could gain too much power.



*The direct democracy of Greece was considered an ideal form of democracy, but women, slaves and foreigners were excluded.*

Imagine what it would be like if every citizen took a direct part in all governmental decisionmaking.

The direct democracy of Greece was considered an ideal form of democracy because it required a high level of participation by every citizen. Yet the system was far from perfect. Women, slaves and foreigners were excluded because they were not considered citizens. Also, it took a long time to get anything done because almost everything had to be voted on.

Today, it is impossible for a country to operate on a national level under a direct democracy. Most countries have millions of citizens. Imagine what it would be like if every citizen took a direct part in all governmental decisionmaking. How would you inform everyone of the issues that arise from day to day? How would you collect their votes?

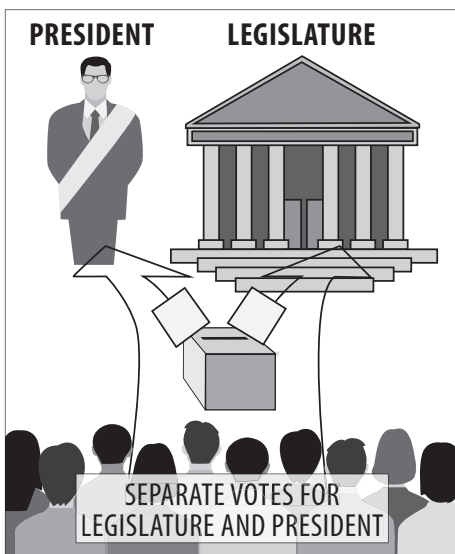
Some countries still have aspects of a direct democracy. Sometimes all the people in a country are asked to vote on a specific issue. For example, they may vote for or against a proposed new constitution; in the United Kingdom, a vote by all UK citizens resident in the country was held on whether the



UK should leave the European Union. This type of vote is called a 'referendum' and comes close to direct democracy. Local governments, small communities and tribes or clans may also allow everyone to come together and vote on certain issues. This is direct democracy at a local level.

### 1.3.2 REPRESENTATIVE DEMOCRACY

In an indirect or representative democracy, the people elect representatives to make decisions for them. The representatives' job is to carry out the day-to-day governing of the country and decide on important issues such as making and implementing laws. A representative may be one person or a small group of people. When the representatives make decisions, they express the will of the people. In a democracy, these representatives are accountable to the people at regular elections. At these elections, the people can express their approval or disapproval by voting for or against the representatives.



*In a representative democracy, representatives express the will of the people.*

Some representative democracies have kings or queens who have inherited their positions. These are constitutional monarchies. The kings and queens are usually figureheads, meaning they symbolise the country but have very limited power – except in a country like Swaziland, which is one of the few countries where the king still has absolute power. A king or queen in a constitutional monarchy may advise the government but his or her actions are controlled by the government. The United Kingdom, Japan and Lesotho are examples of constitutional monarchies.

Some countries that are making a transition from a dictatorship or autocracy to democracy may have a limited form of representative democracy because the previous rulers have a stipulated number of seats that must be reserved for them in the national parliament. For instance, in Myanmar (Burma) the military that used to rule the country have 25% of the seats allocated to them without being elected by the people.



**EXERCISE 4****Helping to choose the best type of Democracy**

The small country of Butika has 3 million residents. It is made up of 300 cities, towns and villages ranging in population from 500 000 to 200. The citizens of Butika want to form a democracy, but they cannot decide whether to form a direct or a representative democracy. They have hired you to advise them on the type of democracy they should choose.

1. List the advantages and disadvantages of direct democracy for Butika.
2. List the advantages and disadvantages of representative democracy for Butika.
3. Make a recommendation to the people of Butika about which type of democracy is best for them. Give your reasons for the recommendation.

**1.4 THE DIFFERENCE BETWEEN DEMOCRACY AND DICTATORSHIP**

In a dictatorship one person, or a small group of people, holds the power. The dictator's word is law. The dictator or those who rule are not responsible to the will of the people. Nazi Germany under Hitler, Uganda under Idi Amin and the former Soviet Union are examples of dictatorships.



*Nazi Germany under Hitler and Uganda under Idi Amin are examples of dictatorships.*



*All dictatorships are authoritarian. Human rights are frequently restricted, and the government uses force to maintain its power.*

All dictatorships are authoritarian, meaning that they are governments in which those in power hold absolute and unchallengeable authority over the people. Such governments do not allow their decisions to be questioned. Rights such as freedom of expression, assembly and the press are frequently restricted.

Modern dictatorships are also often totalitarian. This means that the government attempts to have power over all aspects of human affairs, not just government affairs. They may tell the people where they can live, where to work and how many children to have. Governments like these, such as that of North Korea, often violate the human rights of the people.

Authoritarian or totalitarian governments may be controlled by the military or a small group of civilian people (the Communist Party in the former Soviet Union and China are examples). There can also be monarchies where a king, queen or members of a royal family inherit and exercise unlimited power, as is the case of Swaziland.

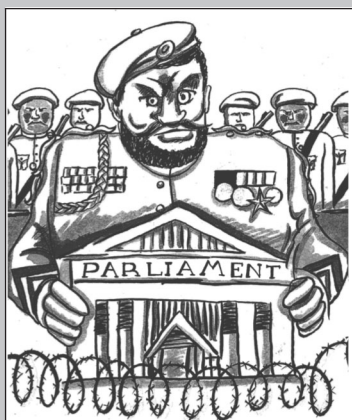
Sometimes a dictatorship may have the appearance of a democracy.

Sometimes a dictatorship has the appearance of democracy and seems to be controlled by the people. The people vote in popular elections, but the vote is closely controlled and the candidates are from only one political party – the party of the dictator. An elected legislative body may even exist, but it usually rubber-stamps the policies of the dictator.

Many dictators are not elected but assume power by force. Some are military leaders; others use the military to help them gain control of the government.

## EXERCISE 5

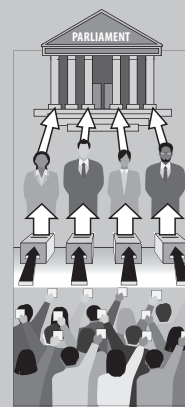
## What kind of government is it?



Dictatorship



Direct democracy



Representative democracy

Read the following scenarios and decide whether the government is a dictatorship, a direct democracy or a representative democracy. Give reasons for your answer.

1. The people elect representatives to the country's parliament, which makes its laws. There is one elected person for every 100 000 people. The President is elected and judges are appointed by the President.
2. There was a revolution and the head of the military is the President. The President makes the laws and appoints judges and other officials. There are presidential elections every five years, but no one stands for election against the President.
3. There are a king and queen who do not make or enforce the laws of the country. They carry out the official ceremonial duties of the country. The laws are made by an elected parliament which chooses the Prime Minister. Elections are held regularly.
4. A chief who is not elected by the people, and who has inherited his title from his father, makes and enforces the laws of the area. He has his own police force which makes sure that the people obey his laws. He is advised by a council but need not follow its advice. His son will take over as chief when he dies.
5. A group of leaders makes the laws of the country. They control the military and the police. They tell the media what they can and cannot publish. There are no elections. There is only one political party, which is that of the leaders.
6. The legislature writes the laws requested by the citizens at the monthly town meeting, which is open to all citizens. After a law has been written, the citizens vote whether to make it a law. There is an elected President who controls the police and the military. Every cabinet member and judge is elected by the people.
7. The President and the parliament have major disagreements over the future direction of the country. The parliament is not elected by the citizens, but the President is elected. The President disbands the parliament and arranges new elections.
8. A country employs two million foreigners who do most of the work in the country, but do not have the right to vote – no matter how long they have worked in the country. Some have lived there for over 20 years but they may not apply for citizenship for themselves or their children born in that country. Only the local people, who number 750 000, may vote for representatives in parliament; however, the real power is held by the ruler and his family. The local people receive all kinds of benefits regarding housing, health, education etc. These benefits are not available to foreigners.
9. The people vote in a referendum to decide whether or not their country should adopt a new constitution. Every citizen over the age of 18 years may vote in the referendum.



## 1.5 TYPES OF REPRESENTATIVE DEMOCRACY



*In a parliamentary democracy, the Prime Minister chooses the cabinet ministers from the legislative body.*

There are different types of representative democracy. They are parliamentary democracy, presidential democracy, and a combination of both. These types of democracy are defined according to the relationship between the legislative (law-making) branch of the government and the executive branch of the government, which carries out the laws.

### 1.5.1 PARLIAMENTARY DEMOCRACY

In a parliamentary democracy, voters elect representatives to a legislative body called a parliament. Members of parliament then choose a person to head the executive branch of the government. That person is usually called a Prime Minister. The Prime Minister is often the leader of the majority party in parliament. Once the Prime Minister is chosen, he or she chooses the ministers for the cabinet from the legislative body. Thus, the executive is a part of the legislative branch of government. The Prime Minister and the cabinet members remain in office for as long as they have support from a majority in the legislature. If the Prime Minister loses support and receives a 'vote of no confidence' from a majority of the legislature, he or she must resign from office and a new Prime Minister and cabinet will be elected by parliament.

The way in which representatives in a parliamentary democracy are elected may vary. Many countries use 'individual representation' whereby the members of parliament (MPs) are 'constituency-based' and elected directly by the people living in their constituencies, as is the case in the United Kingdom. Under the constituency-based system, if members of the community are unhappy with the conduct of their MP during his or her term of office, they can complain to the party concerned or not vote for that MP at the next election. An advantage is that under the 'constituency-based' system the MPs are directly accountable to their constituencies, whose members can hold them accountable. A disadvantage is that the 'constituency-based' system allows the majority party in each constituency – even if it is by a very small number in each – to rule the whole country if it has won the most constituencies. Therefore, the parties that lost by very few votes in each constituency, and the smaller parties, will not be represented in the parliament.

In other countries the representatives in parliament may be chosen from lists of candidates nominated by the political parties. This means that the MPs are not elected directly by the voters but appointed by the political party for which they voted. This happens in countries where 'proportional representation' applies, as in South Africa. If members of a community are unhappy about the conduct of the MP allocated to their constituency, their only remedy is to complain to the party or wait until the next election and hope that they and other community members can vote out the party concerned. If the party again obtains a proportional majority it may still impose the same MP on them again against the wishes of the community. The disadvantage is that MPs under the 'proportional representation' system are accountable to the party that appointed them – not the people in the community who voted in the election. An advantage is that the 'proportional representation' system allows all the parties that achieve a certain percentage of the total number of votes (eg 2%) to be represented in parliament.

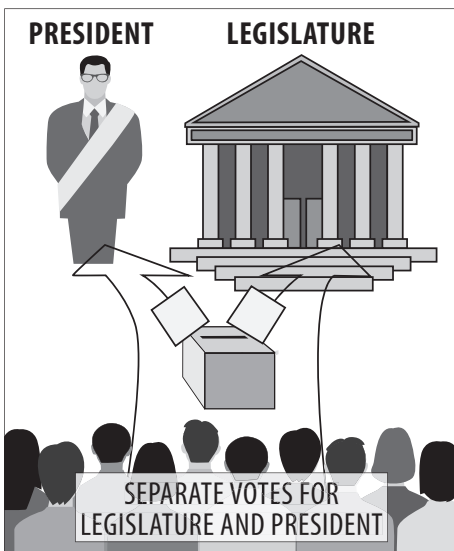
At the local government level in South Africa a mixed system of proportional representation and a ward constituency system operates. This means that voters vote for both a political party and ward councillors. After South Africa's first democratic elections, the voting system was reviewed and it was recommended that at national and provincial level half the seats in the legislatures should be elected on a 'constituency' basis and the other half on a 'proportional representation' basis, but this was never implemented.

Some parliamentary democracies, such as South Africa, have a President instead of a Prime Minister. However, the role of a President in a parliamentary democracy is much the same as that of a Prime Minister. The President is elected by the members of parliament (MPs) to head the executive branch of government, and he or she chooses the members of the cabinet. Like a Prime Minister, if the President receives a 'vote of no confidence' from the majority of MPs, he or she must resign. The provinces in South Africa have Prime Ministers who are called premiers. The premiers head the provincial executive councils, which are the same as cabinets. The council members are referred to as members of the executive council (MECs) and the provincial parliamentarians are called members of the provincial legislature (MPLs). Premiers must also resign if a majority of the MPLs pass a 'vote of no confidence' in them. The MPLs in South Africa are also chosen on a 'proportional representation' basis.

Under the ‘proportional representation’ system, where MPs and MPLs in South Africa are chosen from ‘party lists’, it is possible for the ruling party to ‘recall’ a sitting President or a premier, in which case he or she is obliged to resign. This happened to President Thabo Mbeki in 2008 and Premier Senzo Mchunu of KwaZulu-Natal in 2016. This can be done without consulting the MPs and MPLs, and parliament or the provincial legislature may have no say in the decision, which is usually made by the national executive committee of the ruling party.

It is sometimes said that when MPs and MPLs have to vote on a sensitive issue on which members of parties may have differing views within the parties themselves, the MPs and MPLs should vote in a secret ballot. This is particularly so where there are issues of conscience involved (eg where colleagues in the party have been involved in corruption).

In some countries when there are controversial issues on which party members may differ they are allowed a ‘free vote’ (eg the vote in the United Kingdom on whether the country should leave the European Union, when the MPs and cabinet members were able to canvass for either side). Such a vote may not necessarily be by secret ballot but will be if a referendum is held.



*In a presidential democracy, the legislative and executive branches of government are independent of each other.*

## 1.5.2 PRESIDENTIAL DEMOCRACY

In a presidential democracy the legislative and executive branches of government are independent of each other. Voters elect representatives to the legislative body. In addition, voters elect the head of the executive branch, the President. The President holds office for a fixed amount of time. The President is not subject to the direct control of the legislature, but the legislature can check the President’s power. Likewise, the President can check the legislature’s power. This is called a system of checks and balances. In a presidential democracy it is possible to have a President from one political party and a majority of the legislature from another political party (this often happens in the USA).



**WHERE YOU LIVE**

DOES YOUR  
COUNTRY HAVE A  
PARLIAMENTARY OR  
A PRESIDENTIAL  
DEMOCRACY?


### 1.5.3 COMBINED PARLIAMENTARY AND PRESIDENTIAL DEMOCRACY

Parliamentary and presidential democracies have advantages and disadvantages. Parliamentary governments usually do not take as long to pass laws, because there is less disagreement between the executive and legislative branches of government. Those who favour presidential democracies say that the disagreements between the branches of government are good because they check and balance each other. However, in parliamentary democracies there is no distinct division of powers and therefore much weaker checks and balances. Most governments in the world today are parliamentary in structure.

Some countries have a combined parliamentary and presidential democracy. For example, in France there is a President, who is elected by the people, and a Prime Minister, who is elected by parliament.

**EXERCISE 6****Parliamentary v Presidential Democracy**

1. List the characteristics of a presidential democracy.
2. Role-play a conversation between the Prime Minister in a parliamentary democracy and the leader of the opposition in the parliament. The Prime Minister wants to declare war against a neighbouring country. The opposition leader is against it.
3. Role-play a conversation between an elected President in a presidential democracy and the leader of the National Assembly. The leader of the National Assembly is not from the same political party as the President. The President wants to declare war against a neighbouring country. The leader of the National Assembly is against it.
4. What were the similarities and differences between the two conversations?
5. Which system would you choose for your country?

**1.6 FUNDAMENTAL PRINCIPLES OF DEMOCRACY**


Democracy  
exists in  
a country  
because people  
believe in it.

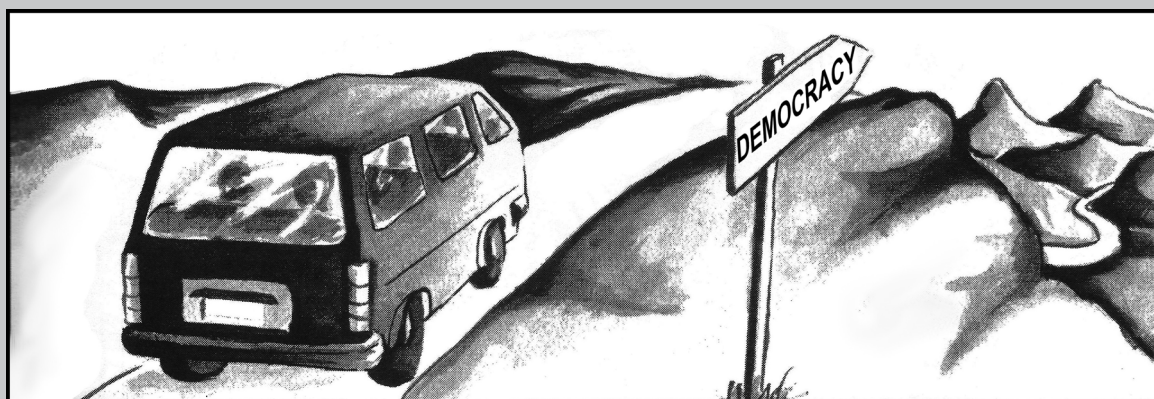
**D**emocracy exists in a country because the people believe in it and practise its principles. Democratic principles are defined as the ideas which most people believe are essential for a democracy. We will call these 'signposts' to democracy, because when we see them, they are signs that the country is on the road to democracy.

**EXERCISE 7****On the road to Democracy**

Assume you are travelling on a road to a country where the perfect democracy exists. The road has many wrong turns, bumps and dangers which make it difficult to reach the perfect democracy. However, there are signposts along the way to guide you in the right direction. These signposts name the basic principles that people in a democracy support. You are determined to find that perfect democratic country.

Divide into groups and:

1. On your 'Road to Democracy' map give your 'perfect democracy' a name in the space provided.
2. List the basic principles of democracy on a separate sheet. Now label the signposts (□) along the road that give information about the basic principles of democracy. These signposts should name the basic essentials that must exist in order to have the perfect democracy.
3. List the factors that prevent you from reaching your perfect democracy. Now label the signs for wrong turns (○), obstacles (∇) and dangers (△) along the road. These signs indicate difficulties in achieving democracy.
4. At the end of the road is your perfect democracy. List the benefits people will have in your perfect democracy, in the space on the map.
5. Compare your group's map with those of the other groups. Did you name the same signposts, obstacles, dangers and benefits as the others?

**1.7 SIGNPOSTS TO DEMOCRACY**

People in democracies around the world support many of the same basic principles. These are referred to as signposts to democracy.

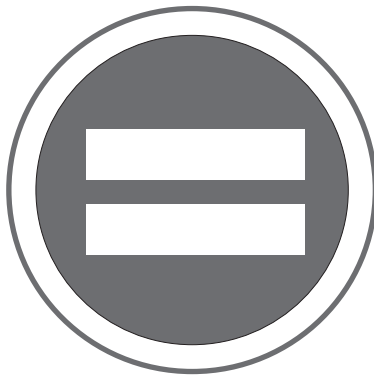
People from around the world have identified the basic principles which must exist in order to have a democratic government. These principles often become part of the constitution or bill of rights in a democratic society. Though no two democratic countries are exactly alike, people in democracies support many of the same basic principles and desire the same benefits from their government. The following are examples of the principles referred to as signposts to democracy which will be used throughout this book:



*Citizen participation*

## 1.7.1 CITIZEN PARTICIPATION

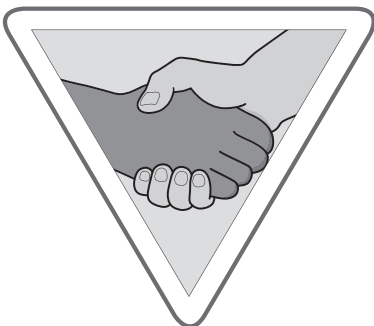
One of the most basic signposts of a democracy is citizen participation in government. Participation is the key role of citizens in a democracy. It is not only their right but also their duty. Citizen participation may take many forms including standing for election, voting in elections, becoming informed, debating issues, attending community or civic meetings, being members of private voluntary organisations, paying taxes and even protesting. Participation builds a better democracy.



*Equality*

## 1.7.2 EQUALITY

Democratic societies emphasise the principle that all people are equal. Equality means that all individuals are valued equally, have equal opportunities, and may not be discriminated against because of their race, religion, ethnic group, gender or sexual orientation. In a democracy, individuals and groups still maintain their right to have different cultures, personalities, languages and beliefs.



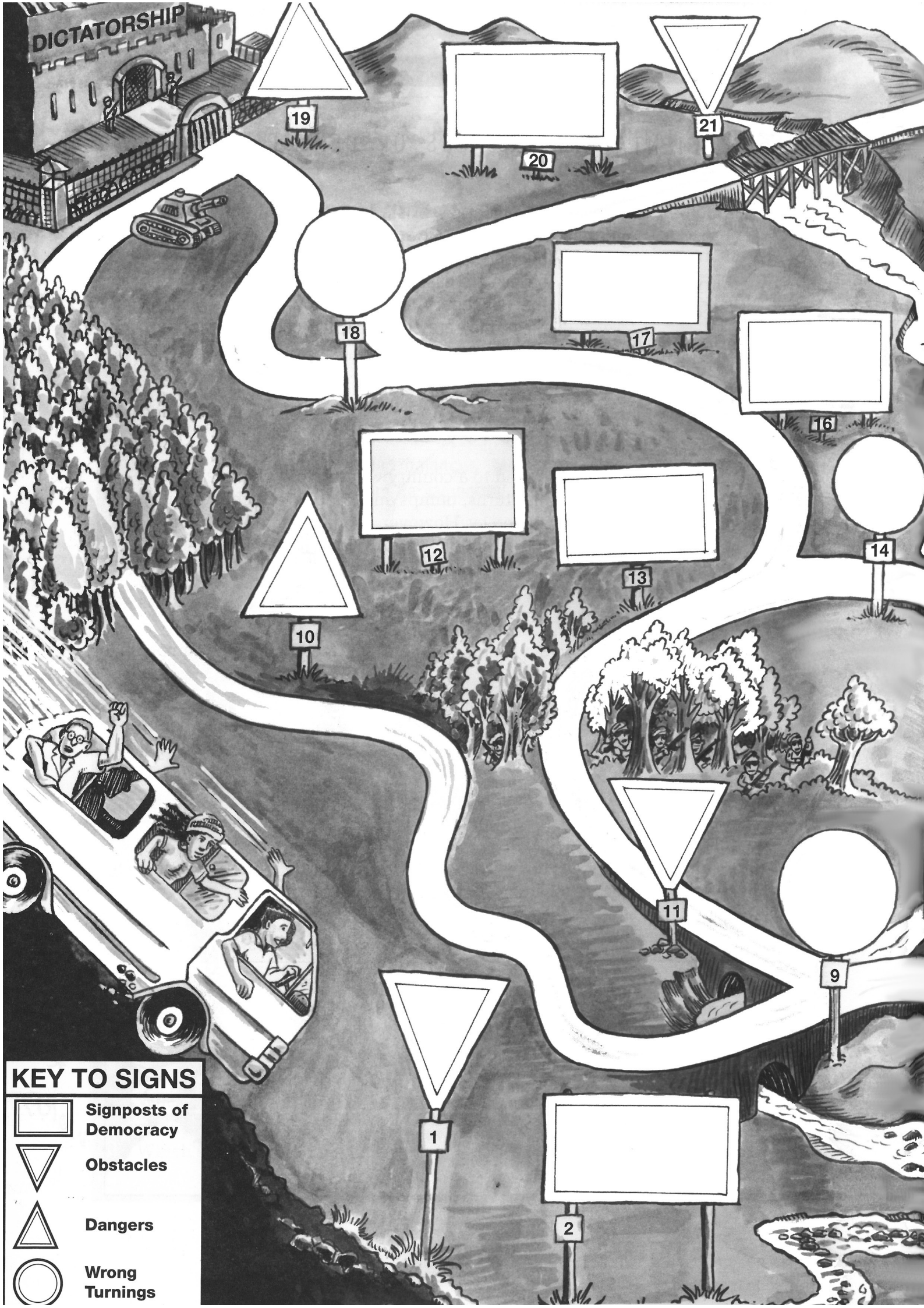
*Political tolerance*

## 1.7.3 POLITICAL TOLERANCE

Democratic societies are politically tolerant. This means that while the majority of the people rule in a democracy, the rights of the minority must be protected. People who are not in power must be allowed to organise and speak out. Minorities are sometimes referred to as 'the opposition' because they may have ideas which are different from those of the majority. Individual citizens must also learn to be tolerant of one another.

A democratic society is often composed of people from different cultures, racial, religious and ethnic groups, some of whom may have viewpoints different from those of the majority of the population. A democratic society is enriched by diversity. If the majority deny rights to and destroy their opposition, then they also destroy democracy. 'Xenophobia', for example, is a form of intolerance aimed at foreigners in a country, which may be caused by political or economic factors.

These principles often become part of the constitution or bill of rights.



DICTATORSHIP

19

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



11

9

1

2

**KEY TO SIGNS**

-  Signposts of Democracy
-  Obstacles
-  Dangers
-  Wrong Turnings



WELCOME TO  
[ ]  
THE PERFECT DEMOCRACY

BENEFITS OF  
DEMOCRACY:





Accountability

#### 1.7.4 ACCOUNTABILITY

In a democracy, elected and appointed officials have to be accountable to the people. They are responsible for their actions. Public officials must make decisions and perform their duties according to the will and wishes of the people, not for themselves. This means that they must behave as 'public servants' and not see their job as an entitlement to earn a living at the expense of taxpayers.



Transparency

#### 1.7.5 TRANSPARENCY

For government to be accountable the people must be aware of what is happening in the country. This is referred to as transparency in government. A transparent government holds public meetings and allows citizens to attend. In a democracy, the media and the people are able to get information about what decisions are being made, by whom and why. This is specifically provided for in the Constitution and laws of South Africa.



Regular, free and fair elections

#### 1.7.6 REGULAR, FREE AND FAIR ELECTIONS

One way citizens of the country express their will is by electing officials to represent them in government. Democracy insists that these elected officials are chosen and can be peacefully removed from office in a free and fair manner. Intimidation, corruption and threats to citizens during or before an election are against the principles of democracy.

In a democracy, elections are held regularly every so many years. Participation in elections should not be based on a citizen's wealth.

For free and fair elections to occur, most adult citizens should have the right to stand for government office. Additionally, there should not be obstacles that make it difficult for people to vote.



Economic freedom

#### 1.7.7 ECONOMIC FREEDOM

People in a democracy must have some form of economic freedom. This means that the government allows some private ownership of property and businesses, and that the people are allowed to choose their own work and trade unions. The role the government should play in the economy is open to debate, but it is generally accepted that free markets should exist in a democracy and that the state should not totally control the economy. Some argue that the state should play a stronger role in countries where great inequality of wealth exists due to past

discrimination or other unfair practices. Where this happens governments should make sure that businesses controlled by them are efficiently and effectively managed to ensure that the people in the country receive the services to which they are entitled.

### 1.7.8 CONTROL OF THE ABUSE OF POWER



*Control of the abuse of power  
(see Chapter 3)*

Democratic societies try to prevent any elected official or group of people from misusing or abusing their power. One of the most common abuses of power is corruption. Corruption occurs when government officials use public funds for their own benefit or exercise power in an illegal manner.

Various methods have been used in different countries to prevent these abuses. Frequently the government is structured to limit the powers of the branches of government to have independent courts and agencies with power to act against any illegal action by an elected official or branch of government; to allow for citizen participation in regular free and fair elections; and to check abuse of power by the police.

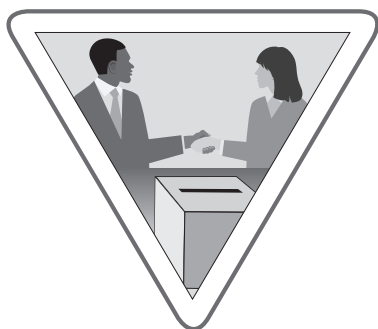
### 1.7.9 BILL OF RIGHTS



*Bill of rights*

Many democratic countries also choose to have a bill of rights to protect the people against abuse of power. A bill of rights is a list of rights and freedoms guaranteed to all people in the country. When a bill of rights becomes part of a country's constitution, the courts have the power to enforce these rights. This may also apply if the bill of rights is contained in a separate law and not in the country's constitution, as applies in Scotland and England and Wales. A bill of rights limits the power of the government and may also impose duties on individuals and organisations.

### 1.7.10 ACCEPTING THE RESULTS OF ELECTIONS



*Accepting the results of elections*

In democratic elections, there are winners and losers. Often the losers in an election believe so strongly that their party or candidate is the best one that they refuse to accept the results of the election. This is against democratic principles. The consequences of not accepting the results of an election may be a government that is ineffective and cannot make decisions. It may even result in violence, which is also against democracy.



*Human rights (see Chapter 4)*

### 1.7.11 HUMAN RIGHTS

All democracies strive to respect and protect the human rights of citizens. Human rights mean those values that reflect respect for human life and human dignity. Democracy emphasises the value of every human being. Examples of human rights that underpin democracy include freedom of expression, freedom of association, freedom of assembly, the right to equality and the right to education.



*Multi-party system*

### 1.7.12 MULTI-PARTY SYSTEM

In order to have a multi-party system, more than one political party must participate in elections and play a role in government. A multi-party system allows for opposition to the party that wins the election. This helps to provide the government with different viewpoints on issues. Additionally, a multi-party system provides voters with a choice of candidates, parties and policies to vote for. Historically, when a country has only one party, the result has been a dictatorship.



*The rule of law*

### 1.7.13 THE RULE OF LAW

In a democracy no one is above the law, not even a king or an elected President. This is called 'the rule of law'. This means that everyone must obey the law and be held accountable if they violate it. Democracy also insists that the law be equally, fairly and consistently enforced. This is sometimes referred to as 'due process of law'.

## EXERCISE 8

### Is Democratia on the road to Democracy?

Look at the following scenarios and decide whether each is a sign that Democratia is on the road to democracy, or taking a wrong turn, meeting an obstacle or facing a danger along the way. Give reasons for your answers.

Identify one or more of the signposts shown on page 23 which relate to each situation.

1. The legislature passes a law requiring all children between the ages of 6 and 16 years to attend school. Government schools are provided.
2. Members of one of the local churches hold a political forum and only allow representatives from one political party to attend.
3. The parliament has a gallery built in their assembly room so that visitors can watch the proceedings.
4. The constitution requires a presidential election every five years.





5. Teachers in the schools of Democratia do not like their working conditions and decide to go on strike.
6. The police shoot and kill a large number of striking mine workers who are demonstrating for higher wages after their strike was declared illegal by the authorities.
7. The constitution says that only people over the age of 18 who have lived in the country for more than one year may vote.
8. A law requires all working citizens to belong to a union.
9. The constitution requires all working adults to pay a small amount of money when they vote in order to help finance the expense of the election.
10. No convicted prisoner may stand as a candidate in an election.
11. One political party that loses the election demands that another election be held immediately.
12. The President is required to give a report to the people every year explaining what he or she has done and what the government plans for the upcoming year.
13. The government determines what 'fair prices' are for all food sold in the country.
14. The government blames protests by poor people, who are demonstrating against the failure by the government to deliver housing to them which had been promised during the last election, on a 'third force'.
15. University students stage a sit-in outside the entrance to parliament during a '#FeesMust Fall' campaign to do away with fees at state universities, and are dispersed with rubber bullets and tear gas.



**WHERE YOU LIVE**

WHAT DO YOU  
EXPECT  
DEMOCRACY TO  
DO FOR YOU?

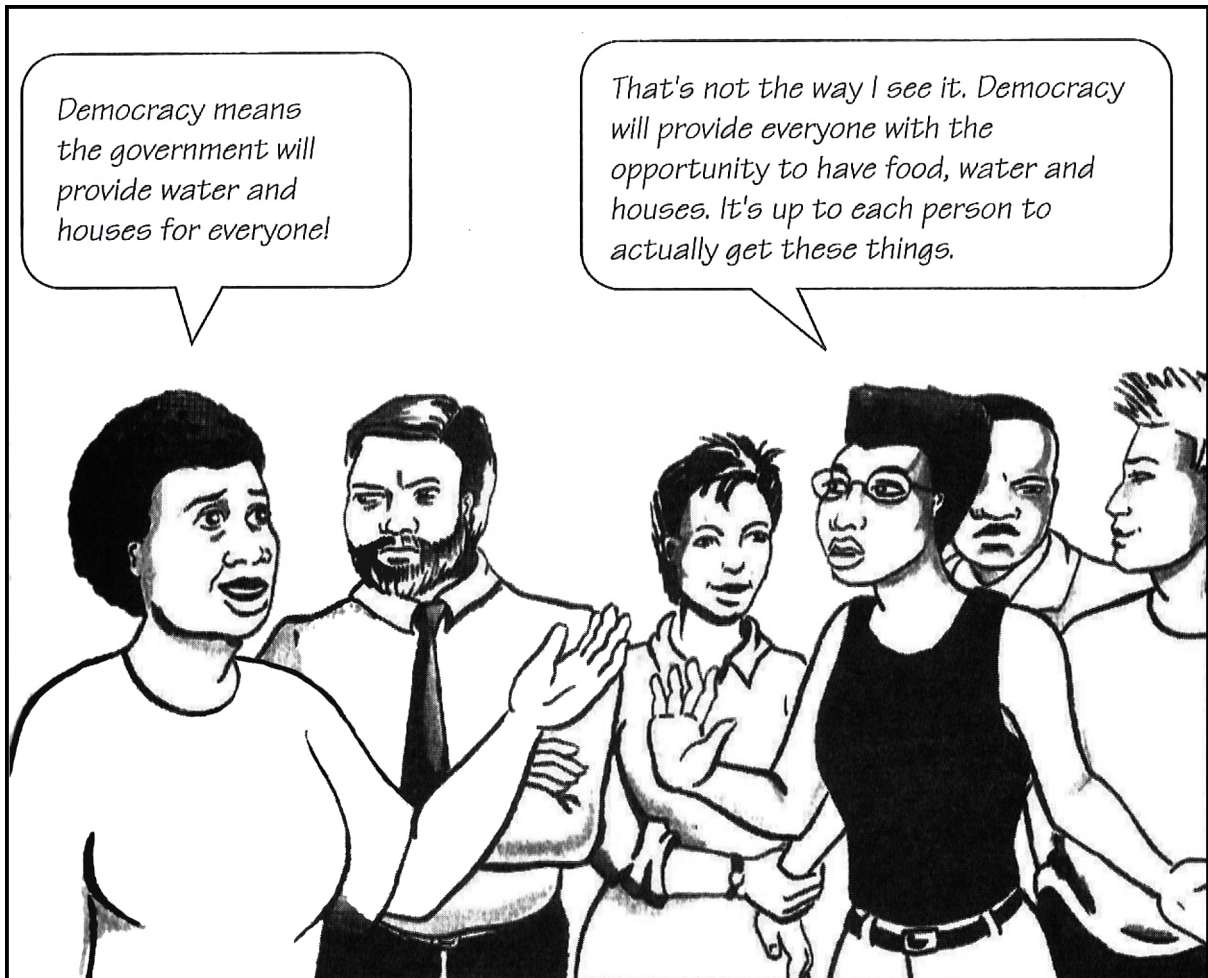
**1.8 EXPECTATIONS OF DEMOCRACY**

**A** democratic government means different things to different people. People have different expectations from a democratic government: What do you expect democracy to do for a country? What do you expect democracy to do for you? What is it that a democracy cannot do for a country? What is it that a democracy cannot do for you?

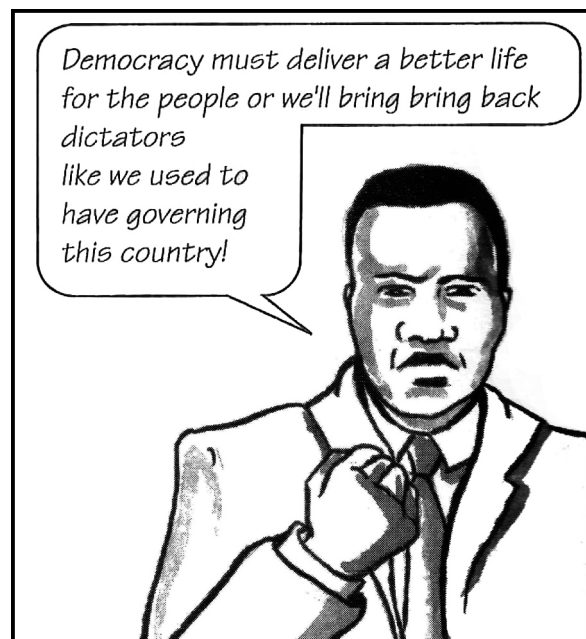
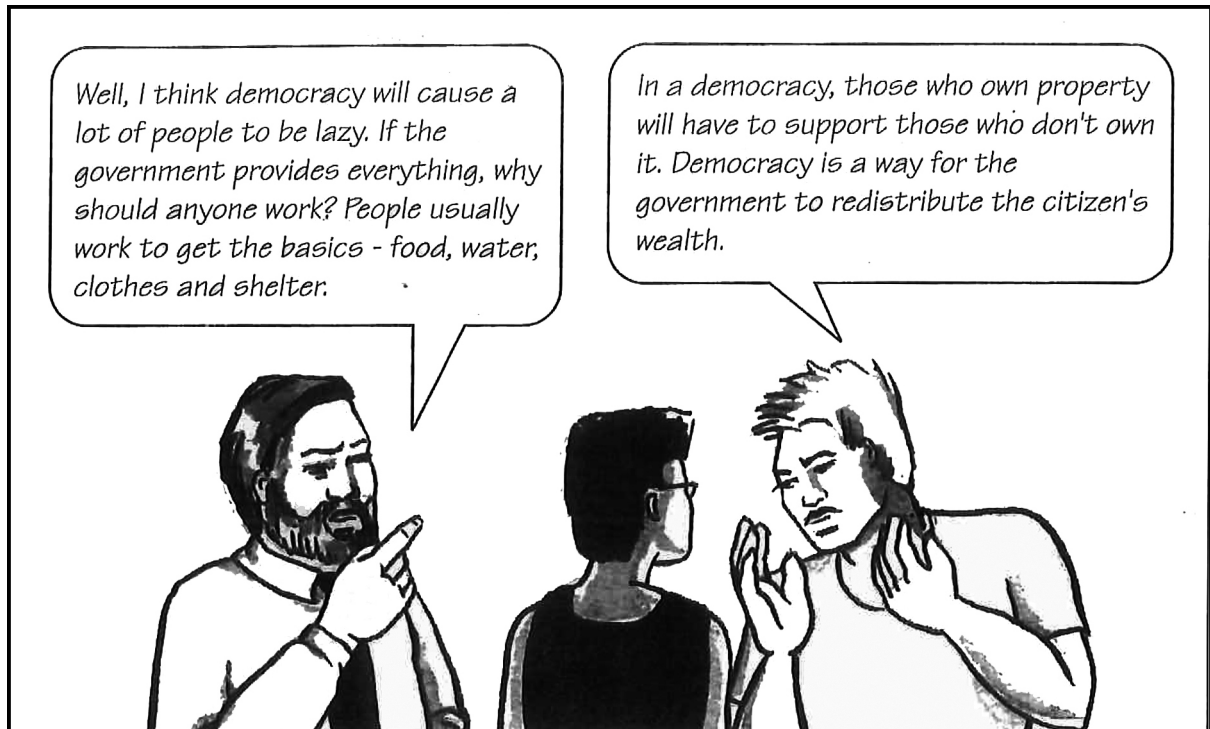
**EXERCISE 9**

**A conversation about Democracy**

Assume that you have just arrived in a newly-formed democratic country. You are anxious to do your part to help build the best democracy ever. Then you overhear the following conversation among a group of citizens who live in the country:




## 1. WHAT IS DEMOCRACY?



1. Role-play the above conversation.
2. What are the six views expressed by the citizens about democracy? Which view comes closest to your own views about democracy?
3. What benefits do you think democracy can provide for its citizens?
4. What are the risks or losses which can come with democracy?
4. Weighing the benefits and risks, do you think a democracy is worthwhile?

## 1.9 YOU AND DEMOCRACY



Some people say that democracy is a way of life.

Every country has a particular culture, contained in its languages, history, art, work habits, and other beliefs and customs. Within this culture there exist beliefs, ideas and attitudes about government and authority which are usually learned at home, in the community and in school. Some people believe that democracy is not just a system of government, it is a way of thinking and acting. It is a culture. They say that democracy is a way of life.

### EXERCISE 10

#### Do you think Democratically?

Read the following statements and mark those which you think are examples of a democratic way of life.

1. I don't like Piet, so I will not allow him into my house.
2. Jane doesn't want to work. Even though I think everyone should work for a living, I think Jane has the right not to work.
3. Nomse is a lawyer and Cecille is a housekeeper, but they are still equal.
4. Poor people who live in shantytowns should be given free housing by the government.
5. Everyone should be given an equal amount of property to do with as they please.
6. My husband can practise a different religion from me.
7. Teachers at schools should be harder on male students because males must learn to be heads of households.
8. The students in the city schools should get textbooks last because they used to get them first. It is payback time and the rural schools should now get textbooks first.
9. My wife should do as I say. I know best.
10. I don't think my sister should go out with anyone from a different culture. Our friends may no longer visit us.
11. No matter what people do to him, Mandla never uses violence.
12. A mayor believes that 'virginity testing' of young girls should be done, and that they should be rewarded with study bursaries, because it will prevent them from becoming HIV-positive.



For additional resources from Civics Academy see: *What is a democracy?* <http://www.civicsacademy.co.za/video/democracy>



## 2. HOW GOVERNMENT WORKS IN A DEMOCRACY



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### OBJECTIVES

After reading this chapter you should be able to—

1. define a constitution and a bill of rights;
2. describe how a constitution comes about;
3. explain how a constitution may be changed;
4. describe the different systems of government;
5. explain how the legislative, executive and judicial branches of government work;
6. conduct a mock parliamentary debate;
7. describe the role government may play in the economy;
8. explain the role of local government in democracy.

## 2.1 A CONSTITUTION AND A BILL OF RIGHTS

The constitution is the basic law of a country. It is usually referred to as the highest law of the land. This means that all other laws must conform to the provisions of the constitution. It describes how a government is structured and operates. It establishes the basic rules for politics and government in a society. Constitutions are usually written down, although some are only partially written and some, as in the United Kingdom, are not written at all but the powers of government may be set out in other laws.

A constitution stipulates the powers given to government. It usually includes a bill of rights listing the rights of individuals and limits on the power of government. Most effective constitutions include provisions to prevent the state from abusing its power.

### EXERCISE 1

#### Which constitutional provisions support or prevent Democracy?

Assume that a new constitution is being written in a country that is attempting to become a democracy. In Chapter 1 we discussed the definition of democracy and its signposts, which are shown below. Divide into groups, look at those signposts and decide which of the following provisions support or work against the idea of democracy. Identify which signpost or principle of democracy is related to each provision.

1. 'One must own land to vote.'
2. 'A President will be elected every four years.'
3. 'A judge is appointed for life and cannot be removed under any circumstances.'
4. 'A constitution may only be amended by a two-thirds majority vote of both houses of parliament.'
5. 'Members of the executive can vote to override the decision of any court.'
6. 'All votes by citizens must be kept secret from others.'
7. 'All meetings of government involving national security issues may be held in private.'
8. 'No government officials may be prosecuted for a crime while they are in office.'
9. 'The police may obtain a court order requesting that any arrested person be held for one week without trial.'
10. 'The President may issue an order amending the constitution.'



## 2.2 DRAFTING A CONSTITUTION

Constitutions are often the result of compromise, which is an essential element of democracy.

Constitutions come about in many ways. They may be the result of special meetings, sometimes referred to as constituent assemblies or constitutional conventions. These meetings may be composed of representatives elected by the people of a country. Sometimes they are made up of members or organisations or political parties who come together to negotiate and draft a constitution. This happened in South Africa during the transition to democracy, when an interim Constitution was negotiated by political parties and adopted in 1993 for the country's first democratic elections. Thereafter a Constituent Assembly consisting of members of parliament who had been elected under the interim Constitution met to draft the final Constitution of the Republic of South Africa, which was passed by parliament in 1996.

In non-democratic countries military leaders or dictators often attempt to impose constitutions upon the people. These constitutions often collapse because they do not have broad-based support from the people.

Constitutions, like law-making in general, are often the result of compromise. Those negotiating and writing a constitution may agree to write one provision in a certain way in exchange for getting support



*A constituent assembly or constitutional convention is a special meeting called to draw up a constitution.*

## WHERE YOU LIVE

DOES YOUR  
COUNTRY HAVE A  
CONSTITUTION?

for another provision in which they are particularly interested. Compromises often come about to enable the constitution to get the broadest support possible. Many people say that compromise is an essential element of a democracy because it indicates that people are working together. This does not happen in a dictatorship, where one group often imposes its will on others.

After a democratic constitution is written, it must usually be adopted by a vote at a meeting of elected representatives, such as a constituent assembly, or by a vote of the people in a general election. To make certain that a good majority of people support the constitution, more than half of the voters (for example, two-thirds or three-quarters) may be required to approve it.

## EXERCISE 2

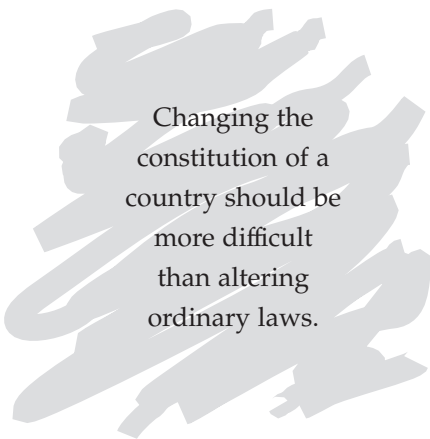
## Debate on allowing 16-year-olds to vote

Assume you are a member of a constituent assembly established to write a new constitution for your country. A proposal has been made to 'allow persons of 16 years of age to vote in all elections'.

Divide into groups to argue for or against this proposal.

Each group should prepare arguments for a debate. If a group is opposed to the provision, it may offer a substitute for it or argue that it should not be in the constitution at all.

## 2.3 CHANGING THE CONSTITUTION



Changing the constitution of a country should be more difficult than altering ordinary laws.

Sometimes experience or other changes in a country make it necessary to change a constitution. This is usually done by writing and adopting a new provision called an 'amendment'. Some constitutions make it difficult to make new amendments, eg by requiring a two-thirds majority vote of all the people in the country. Other constitutions make it easier, such as requiring a majority vote of the legislature, eg parliament. Some require a combination such as a vote of a majority of the legislature followed by a two-thirds majority vote by the people.

Making it difficult to change a constitution is sometimes referred to as 'entrenching' the provisions of a constitution. Those in favour of this approach argue that this should be done because the constitution should consist of the fundamental principles of government, which should not be easy to revise. Changing a constitution should be much more difficult than altering the ordinary laws of the country.



The 1996 South African Constitution provides that a bill to amend the Constitution can only be passed if at least two-thirds of the members of the National Assembly (that is, at least 267 of the 400 members) vote in favour of it. If the amendment affects provincial powers or boundaries, or if it amends the Bill of Rights, at least six of the nine provinces in the National Council of Provinces must also vote for it. To amend section 1 of the Constitution, which establishes the existence of South Africa as a sovereign, democratic state, and lays out the country's founding values, would require the support of three-quarters of the members of the National Assembly. There have been 17 amendments to the Constitution since 1996.



*Does the banning of corporal punishment in schools lead to a breakdown of discipline among learners?*

**EXERCISE 3****Debating corporal punishment in schools**

Assume that when a constitution was first adopted, a provision banned the use of physical punishment of students in schools. A few years later some school administrators say that students are acting in a more undisciplined fashion than they did before the constitution was adopted. They propose an amendment to the constitution that would allow corporal punishment to be reintroduced in schools. Two-thirds of the members of parliament have to support the amendment to the constitution for it to be passed.

1. Role-play a parliamentary debate with half the members supporting the amendment and half opposing it.
2. Draft an amendment in support of corporal punishment.
3. After the debate, the members should vote on it.

**2.4 STRUCTURE OF GOVERNMENT**

**A** constitution describes the different parts of the government and what powers each will have.

**2.4.1 SYSTEMS OF GOVERNMENT**

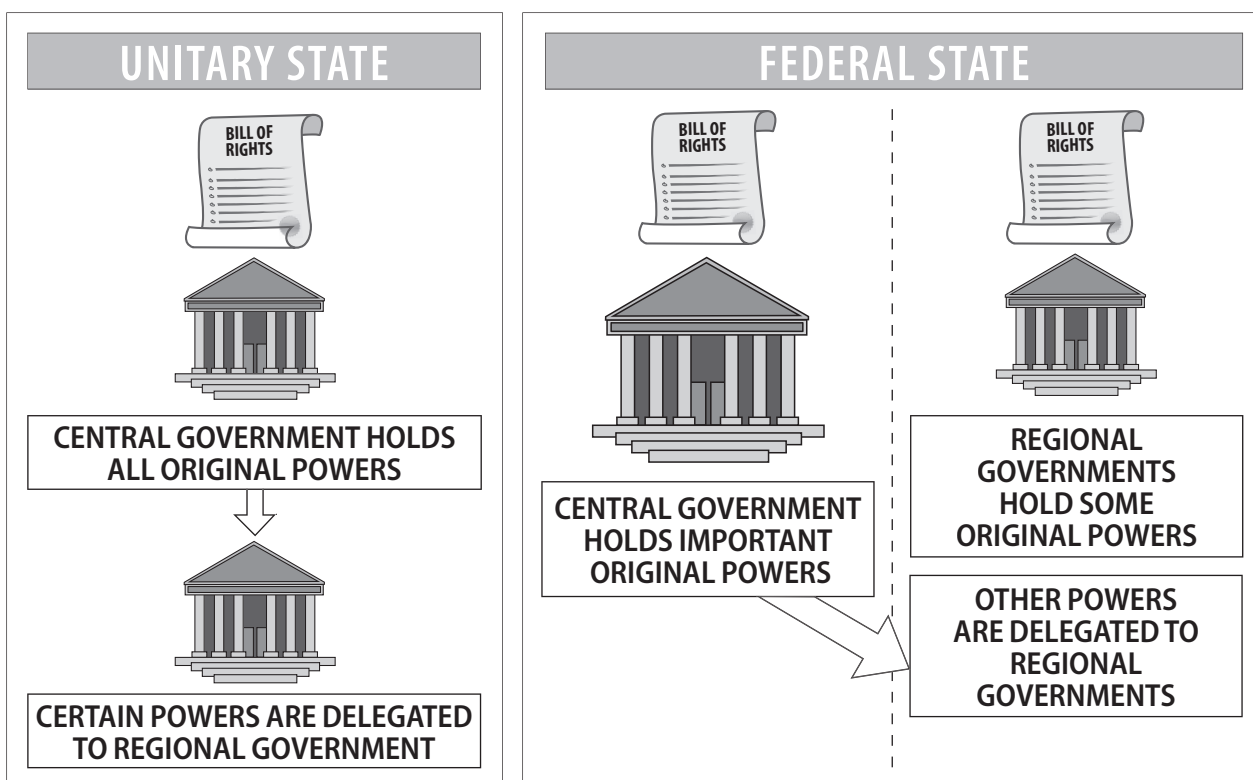
A major decision regarding the structure of government concerns what powers are given to a central or national government and what powers are given to regional or local governments.

A **unitary system** of democracy is when the central or national government is given superior power but can delegate some powers to provincial and local governments. Examples are South Africa and Namibia.

**WHERE YOU LIVE**  
**IS THE**  
**GOVERNMENT OF**  
**YOUR COUNTRY**  
**UNITARY OR**  
**FEDERAL?**

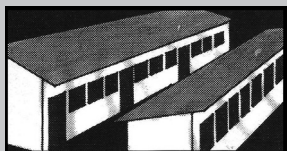
A **system of federalism** is when both central and provincial or state governments are supreme regarding certain powers (sometimes called 'original powers'). The structure of federal governments differ. A broad definition of 'federalism' refers to where there are two or more levels of government (eg a central and state or provincial governments) that exist in a country and govern through common institutions with shared powers that may overlap and are set out in the constitution. For example, state governments might be given the power to make policies regarding schools and other local services in their areas. Examples are Nigeria and India.

A third system of democracy is called a **confederation**, where separate states are linked together to co-operate in certain ways but are otherwise basically independent from one another. An example is the European Community, the Commonwealth of Independent States (CIS) and the Southern African Development Community (SADC).

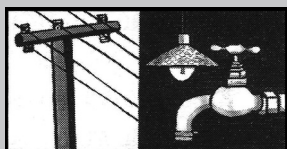


**EXERCISE 4****Dividing powers among National, Provincial and Local Governments**

Assume you are setting up a new government structure in a country. You must decide whether a national, provincial or local government should be given the following powers. Give reasons for your answers.



1. Funding of schools, including how much money should be spent on local schools.



2. Provision of electricity and water, including which communities should receive electricity and water.



3. Laws against discrimination, including how to enforce laws against discrimination.



4. Language in schools and universities, including which language should be used in teaching in schools and universities.



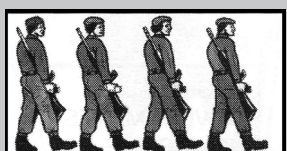
5. Complaints against the police, including how to handle complaints against the police.



6. Ownership of land, including who has the right to own land in an area.



7. Transportation, including who is allowed to own and drive taxis.




8. Military service, including how many people should be in the military.



9. Foreign treaties, including the power to make treaties with neighbouring countries.





Who should control the land is a subject of great debate in most democracies.

How to determine what area of land will be part of a province or local government or metropolitan municipality is a subject of great debate in most democracies. If different racial, ethnic or religious groups live in an area, the amount of land and the number of people will usually determine who has the majority and consequently, the power in the area. This will also depend on who can vote in a particular area.

A particular problem arises when countries change from a dictatorship or a pre-colonial traditional form of government to a democracy, and certain types of local leaders and governments or traditional authorities have existed for a long time. An example might be a traditional king or chief or a local religious leader who has had the power to govern in an area of the country.

Traditional kings or chiefs who act as unjust dictators, or make other decisions which the people greatly dislike, can lose the support of the people and be removed from power. Sometimes these traditional kings or chiefs have been held accountable for natural disasters (eg floods) and removed from their positions. Traditional kings or chiefs living in a democracy who have been found guilty by the courts of committing crimes or violating the constitution may be removed from power by the head of state (eg the President). This happened recently to a traditional king in the Eastern Cape who was imprisoned for committing crimes against his subjects.

## EXERCISE 5

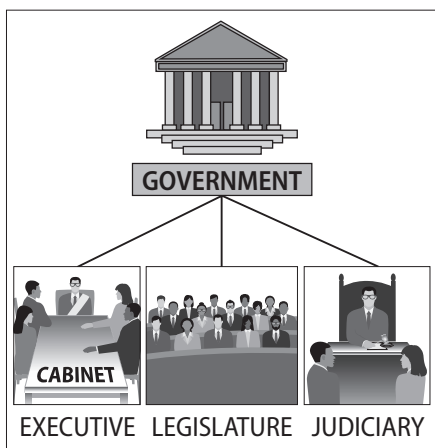
### What is the role of a chief in a rural area in a Democracy?

Chief Ngcobo inherited his power to govern from his father, who inherited it from his father before him. He has the power to arrest people who break customary laws, decides disputes between people living on the land, and interprets and enforces all area laws. He cannot act alone but must make decisions 'in council', which means he is required to consult with his local councillors and administrators before making any decisions.

In the country's new democracy, do you think the constitution should include a provision continuing local governments in areas like that of Chief Ngcobo? Give reasons for your answers.

1. If Chief Ngcobo is totally removed from power in the new democracy, what might happen? What if most of the people in his tribe want him to continue to have the power he has had in the past?
2. Is there any way in a democracy that traditional leaders can play a useful role? Explain.
3. Would your answer be different if there was a local religious leader named Isabel, who ruled an area of the country and had in the past been given the power to serve as lawmaker and judge in the area? All local laws and court decisions were previously made according to her interpretation of religious law. Assume that 95% of the people living in this local area follow the beliefs of this religion and want Isabel to continue as head of the local government.

2.4.2 BRANCHES OF GOVERNMENT

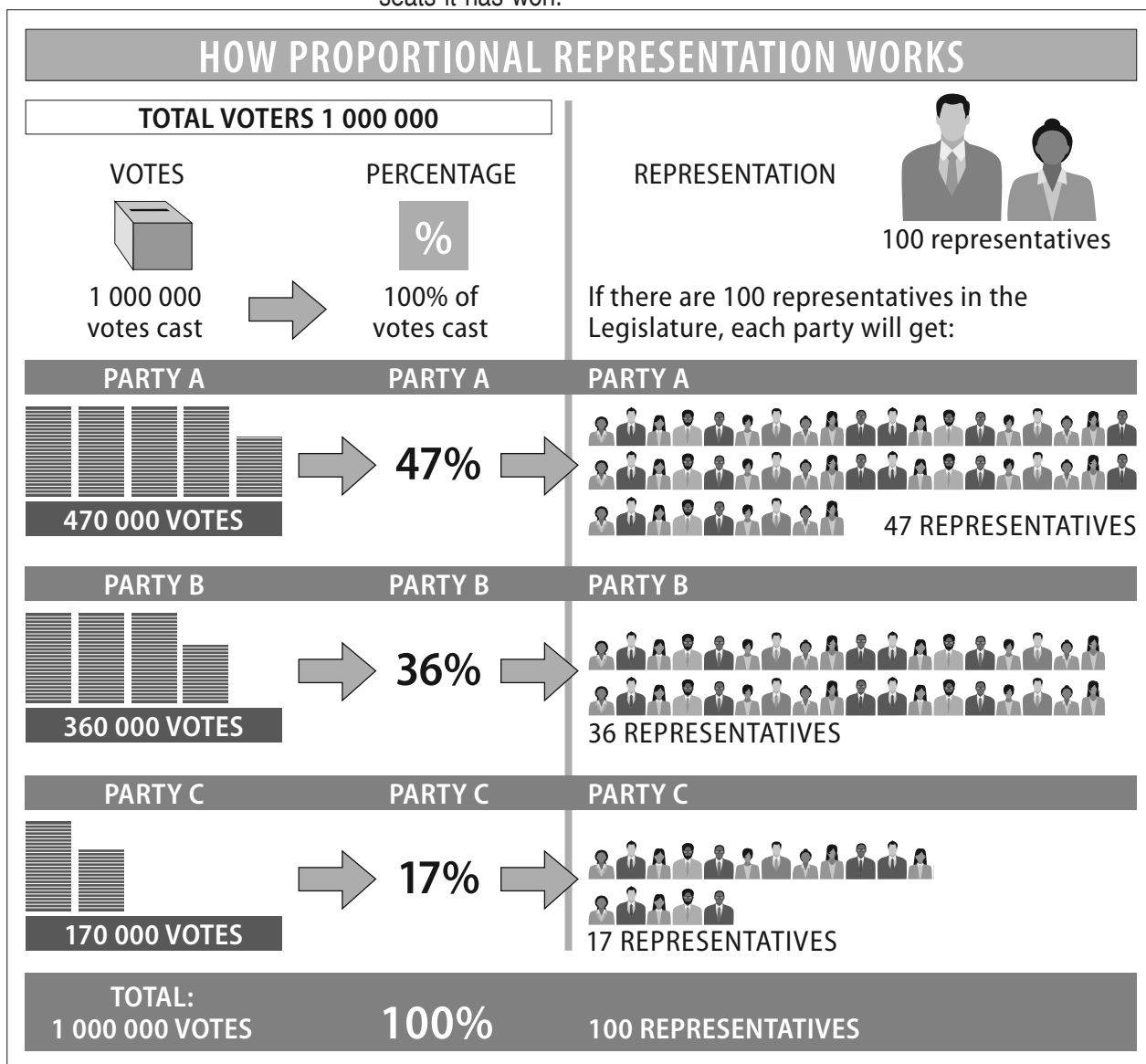


The three branches of democratic government.

Most democracies have three branches of government, made up of the legislature, the executive and the judiciary.

2.4.2.1 LEGISLATURE

The legislature, often called a parliament, is the law-making body, made up of representatives elected directly by the people. There are two popular systems of voting in a democracy. One is **proportional representation**, which means that people usually vote for a political party, not for individuals. Here the percentage of votes the party receives determines its percentage of representatives in the legislature (eg if the legislature had 100 members and a political party received 47% of the overall vote, it would have 47 representatives in the legislature). Each party then decides on the members to fill the seats it has won.





Representatives are sometimes elected to represent districts by the people living in those districts. The person who gets the most votes is usually elected.

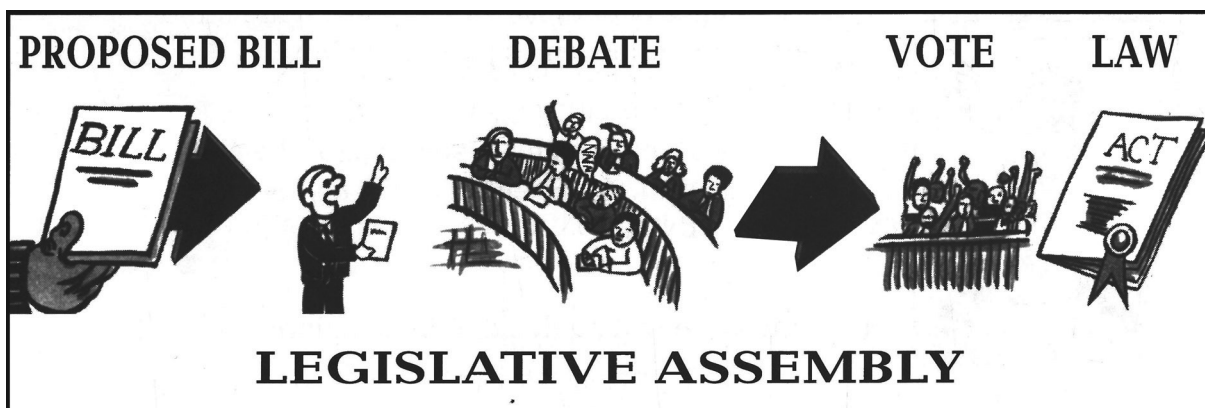
The second system of voting is where **individual representatives** from a particular district, called a constituency, are elected by people living in those districts. Under this system the person with the highest number of votes is usually elected.

Representatives elected to serve in the legislative branch are usually members of a political party. Parties play a key role in organising voting before and during elections, and after the elections in the legislature. In a parliamentary system the party that wins the most seats in the legislature also selects the leader of the government (eg President or Prime Minister) and members of the cabinet from within its own ranks.

If no party receives a clear majority of the votes, parties sometimes join together and form what is called a coalition government, as happened with some of the major metropolitan cities in South Africa after the 2016 local elections.

The legislative branch usually consists of one or two houses. If there is more than one house, they are often referred to as 'upper' and 'lower' houses. The members may be elected in different ways, for example, one may be elected from regional areas and the other from the nation as a whole. Sometimes arrangements are made to give more power to people from rural areas or particular ethnic minority groups. This can be done by giving a greater number of seats in one of the houses to a specific ethnic group, political party or area of the country. Some people regard this as undemocratic.

South Africa has national and provincial elections every four years. Voters vote for a political party, which gets a share of seats in parliament (in both houses in the national parliament – the National Assembly and the National Council of Provinces (NCOP)) and in Provincial Assemblies in the provincial parliaments) in direct proportion to the number of votes the party got in the election. Each party then decides on members to fill the seats it has won.



How party policies become law.

Party members don't always agree among themselves on issues, but often certain policies are closely associated with a particular party. When representatives in the legislature try to make these policies into a law, the policies will be debated and negotiations and compromises may often take place.

For voting – except where a special majority is required by the Constitution – the following quorums are required in the South African parliament: (1) a majority – 201 of the 400 members of parliament – must be present before a vote may be taken (a) on legislation, and (b) on a resolution to remove the speaker or deputy speaker from office; and (2) at least a third (134) of the members must be present before a vote may be taken on any other question before the Assembly. A **quorum** is the smallest number of people needed to be present at a meeting before official decisions can be taken.

All questions before the Assembly are decided by majority decision. This may or may not involve the counting of votes. The process of taking a vote in the Assembly is known as a **division**. In a division, members' votes are recorded using an electronic voting system. The name and vote (or abstention from voting) of each member is recorded. Voting may also be done manually.



**EXERCISE 6****A mock parliamentary debate on the death penalty**

Assume the legislature (called parliament) in your country has two parties, with different positions on the death penalty. Party A is generally in favour of the death penalty and party B is generally against it. Divide your group in half, with half in party A and half in party B. These groups should then attempt, if possible, to each come up with a unified position on a proposed bill on the death penalty. Although everyone is designated as a member of party A and party B, when the bill is voted on, each person may go against the party position and vote as he or she wishes on the issue.

**PROPOSED BILL**

'Anyone convicted of the unlawful and intentional murder of another person shall receive the death penalty.'

**DEBATE PROCEDURE**

1. One person will be selected as 'Speaker of the House', who will indicate the order in which people will speak.



2. People will be called upon to speak in the order in which they raise their hands.



3. No one may speak for more than two minutes.



4. Anyone may move to amend the proposed law and propose that the language in the Bill be changed. If this occurs, the Speaker will call for debate on the amendment and allow one-minute speeches by those commenting on the amendment. After five minutes the Speaker will call for a vote on the amendment. The majority of those voting will decide if the amendment becomes part of the Bill.



5. After all members have spoken (or the allotted time has run out), the Speaker will call for a vote on the proposed Bill.



6. The issue will be decided by a majority vote.

In a democracy, laws are often the result of compromise.

In a democracy, laws are often the result of compromise and co-operation. Some members may agree to change their proposed law to obtain the support of other members. Although this does not happen in South Africa, sometimes members even engage in a practice which may be called 'deal-making' or 'vote-trading'. This means that some members may agree to vote for a certain law if other members will agree to vote for another law they plan to sponsor in the future.

## EXERCISE 7

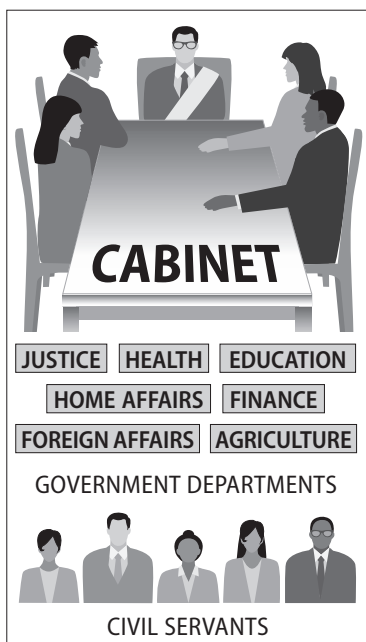
### Should 'vote-trading' be allowed in Parliament?

Assume that in the above debate, Devan, a member of party A, which was in favour of the death penalty, agreed to vote against it. Devan did this based on an offer by Petole, a member of party B, who said: 'If you vote against the Death Penalty Bill, I will agree to vote for a new law that you want which will provide new housing for people in the area where you live.' Petole's vote on the housing bill is needed to get the majority necessary to pass it.

1. Do you think these types of agreements should be allowed in the legislature? Why or why not?
2. If this type of 'vote-trading' is not allowed, what do you think might happen?
3. If 'vote-trading' is allowed, should it be made known to the people in society? Give reasons for your answer.



For additional resources from Civics Academy see: *What is the legislature?* <http://www.civicsacademy.co.za/video/what-is-the-legislature>



The structure of the executive.

### 2.4.2.2 THE EXECUTIVE

The executive usually consists of a President or Prime Minister and a group of ministers known as a cabinet. The executive makes policy decisions and carries out the laws passed by the legislative branch.

The executive consists of the Prime Minister or President, the cabinet ministers and all the departments of government. Typical departments in a government are the departments of justice, education, home affairs, foreign affairs, finance, agriculture, etc. The government workers, often called the 'public service', are all part of this branch of government. The police and the military are part of the executive and in a democracy should be under the ultimate control of the head of the executive branch (Prime Minister or President).



*If the executive loses control of the military, a military coup may result.*

It is important that the military is under the civilian control of the President. If it is not, it can become a very powerful rival force to the President. This has resulted in military coups or takeovers of the government in many countries.



*No one, not even the President, is above the law.*

One of the central signposts of a democracy is the 'rule of law' (see Chapter 1). This means that all members of the government including the President must follow the law and that no one is above the law. When government officials are corrupt or otherwise violate the law, this can lead to a lack of respect for the law, and undermine democracy. They must be held accountable for their unlawful acts. For example, in South Africa, Chapter 9 Institutions (such as the Public Protector) that make recommendations to the legislature (national assembly) to prevent or rectify abuse by the executive are pivotal to ensure good governance and check the abuse of power of the executive and other branches of government. Thus in 2016 the Public Protector recommended to the legislature that the President, who had used public money to upgrade his private residence, in addition to the security upgrades to which he was entitled, should pay back the amount spent on non-security improvements. The ruling party in the legislature refused to act on this recommendation, until the

Constitutional Court – after being approached by the two leading opposition parties – ordered the legislature to comply with the Public Protector’s recommendation (see Chapter 3).

After the Marikana massacre in 2012 the President appointed a judicial commission of inquiry to investigate the actions of the police involved in the shooting of the mine-workers (see Chapter 3).



For additional resources from Civics Academy see: *What is the Executive?* <http://www.civicsacademy.co.za/video/executive>

## EXERCISE 8

### Police action and the rule of law

The law in a country is: ‘The police may use reasonable force to subdue people who are breaking the law or otherwise using force against them.’ Five members of an organisation opposed to the government are stopped by the police while they are driving a car. The police recognise who they are and when one of the suspects takes out a gun, the police fire their weapons and kill all five suspects.

1. What is the law involved in this case?
2. Who violated the law?
3. Which actions that took place here may have been violations of the rule of law?



For additional resources from Civics Academy see: *What is Justice and why do we need the rule of law?* <http://www.civicsacademy.co.za/video/justice>

#### 2.4.2.3 JUDICIARY

#### WHERE YOU LIVE


IS THE JUDICIARY  
INDEPENDENT  
OF THE EXECUTIVE  
AND THE  
LEGISLATURE?

The judiciary is made up of the courts of the country. The role of the courts in a democracy is to provide justice for citizens and to ensure that the laws are followed.

The role of the courts is particularly important because they usually have the power to settle disputes between different branches of government and serve as the final decision-maker in interpreting the constitution. For this to occur, they must be independent from the executive and legislative branches and must have the power of judicial review. This is the power to declare that a law or an action by the executive or legislative branch of government has violated the constitution.

Assume that the constitution requires ‘equal treatment of all people under the law’, and the legislature passes a law saying: ‘Due to a shortage of funds it is no longer necessary to provide accused people in courts with interpreters.’ Using its power of judicial review, a court could declare this law invalid as it violates the constitution in a multi-lingual country.





Judges must be free to make decisions without fear of being punished or harassed.

An independent judiciary is one where judges are free to make decisions without fear of being punished or harassed. The independence of the judiciary can be threatened by how its judges are appointed and removed. If a President can remove any judge who makes a decision that the President does not like, the judiciary would not be independent. Some constitutions support the idea of judges being independent by having them appointed for life. This enables them to make rulings without being influenced by political pressure. In some countries, such as South Africa, judges can only be removed by a vote of two-thirds of the members of parliament. This is known as 'impeachment'.

The courts are used to make people obey the law. They do this by deciding disputes brought to them. In civil cases, which are wrongs against private persons, they order compensation to the injured persons by the law-breakers. In criminal cases, which are wrongs against the state, they order punishment of law-breakers. Another function of the courts is to interpret and apply the law to individual cases. Sometimes when the higher courts make new decisions these are called 'precedents'.

During the transition to democracy in South Africa none of the judges appointed under the apartheid regime was dismissed. However, the Constitutional Court was established so that a new set of judges who subscribed to the principles of a democratic constitutional democracy could be appointed to deal with constitutional cases.

There are the following courts in South Africa:

- Constitutional Court
- Supreme Court of Appeal
- High Court
- Magistrates' courts
- Small Claims Court
- Courts of the chiefs and headmen

**Constitutional Court:** The Constitutional Court is situated in Braamfontein, Johannesburg. The court consists of 11 judges. It is the highest court in South Africa. It hears constitutional matters and may hear other matters that raise an arguable point of law of general public importance which ought to be considered by that court. The Constitutional Court is, in part, a court of appeal and hears appeals against constitutional judgments of the High Court and the Supreme Court of Appeal.

However, there are certain issues that only the Constitutional Court can decide and, because no other court can hear these matters, in this regard it does not function as a court of appeal. For example, only the Constitutional Court can decide on the constitutionality of an amendment to the Constitution. When a High Court or the Supreme Court of Appeal declares that an Act of parliament, a

provincial Act or the conduct of the President is unconstitutional, the order will only come into effect once it has been confirmed by the Constitutional Court.

**Supreme Court of Appeal:** The Supreme Court of Appeal in Bloemfontein is generally the highest court of appeal in all matters except constitutional matters. This is a court of appeal only. It does not hear trials; it hears appeals from the various divisions of the High Court. The court can decide appeals on constitutional cases. There are, however, certain matters that only the Constitutional Court can decide, eg although the Supreme Court of Appeal can declare an Act of parliament, a provincial Act or the conduct of the President unconstitutional, such an order will only take effect once it is confirmed by the Constitutional Court.

All cases in the Supreme Court of Appeal are heard by three or five judges. These judges are appointed from the ordinary judges who sit in the High Courts. Decisions by the Supreme Court of Appeal must be followed by all divisions of the High Court and by all magistrates' courts in South Africa.

**High Court:** The High Court can hear any type of criminal or civil case. Usually, however, the High Court will only hear criminal cases that involve serious forms of punishment (imprisonment of more than 10 years or a fine of more than R400 000). The High Court hears about 5 000 criminal cases a year. A charge of treason must always be heard by the High Court. As for civil actions, the High Court will hear those involving claims of more than R400 000. There are also certain civil matters that must be heard by a High Court (eg divorce, interpretation of wills, declaration of a person as insane). A High Court can also decide any constitutional matter, except for some matters that can only be heard by the Constitutional Court. A High Court can, however, rule on the constitutionality of an Act of parliament, a provincial Act or the conduct of the President. Such a ruling will only come into effect once it is confirmed by the Constitutional Court. Finally, the High Court hears appeals and reviews from the magistrates' courts. It is more expensive to bring an action in the High Court than in a magistrates' court.

**Magistrates' courts:** These are the lower or inferior courts which deal with less serious criminal and civil cases. There are nearly 350 magisterial districts in South Africa. The magisterial districts serve more than 400 magistrates' courts involving more than 1 400 magistrates and 325 regional magistrates. There is usually a magistrate's court in every town. It is cheaper to bring a case in a magistrate's court than in the High Court. Magistrates' courts may be divided into district and regional magistrates' courts. District magistrates' courts are presided over by ordinary magistrates. Regional courts are presided over by magistrates who hear more

serious criminal and civil cases. District courts hear about 600 000 cases a year, while regional courts hear about 60 000 cases a year.

Unlike the High Court judges, the magistrates have limited powers. For example, they may not rule on the constitutionality of any legislation (statute) or the conduct of the President. As previously mentioned, magistrates' courts can be divided into different groups: criminal courts (regional and district) and civil courts.

**Small Claims Courts:** These are the newest courts in South Africa and have been set up in a few of the major towns. Small Claims Courts were introduced in 1985. They allow people to go to court without lawyers for small civil claims of not more than R15 000. Very few documents are needed. No lawyers are allowed. There is no appeal against a decision by the court. If the court has been biased or did not allow one of the parties to give his or her side of the case it can be taken on 'review'.

In the Small Claims Court, cases are heard by commissioners who are appointed by the Minister of Justice. Commissioners are usually practising attorneys and advocates who hear cases in the evenings after work. It is very cheap to go to the Small Claims Court because people can bring or defend the cases themselves. Most claims in the Small Claims Court involve consumer complaints, labour disputes (mainly involving unpaid wages) and damages for motor collisions.

**Courts of chiefs and headmen:** In some areas, the chiefs and headmen of certain African communities have their own courts. These courts apply the customary law of the specific community.

Chiefs' and headmen's courts – there are very few headwomen – have restricted civil and criminal jurisdiction. This means that there are limits on the type of cases they may hear.

No legal representation is allowed. If a person involved in a case before one of these courts is unhappy with the decision, he or she may start afresh in, or appeal to, a magistrate's court.

All cases in High Courts are heard by judges. In the past all judges were appointed from the ranks of senior advocates. However, in 1995 the first advocate who had not attained senior status was appointed as a judge. In the same year the first attorney was appointed as a judge. University lecturers and magistrates may now also be appointed as judges. The President appoints judges on the advice of the Judicial Service Commission, an independent body established for this purpose.

Civil and criminal cases are usually heard by one judge. However, if the case is on appeal it must be heard by at least two judges.

In complicated and difficult cases a judge may be helped by one or two other people called 'assessors' who are not judges. Assessors are usually retired lawyers, magistrates and university lecturers who help the judge decide the facts – not the law. The judge decides the law.

Previously, there was a division of what was called the Supreme Court for each of the four provinces of South Africa. Under apartheid there was also a Supreme Court in each of the so-called independent African 'homeland' states. There are now nine provinces and the 'independent' states no longer exist. The former Supreme Court is now known as the High Court, and has the following divisions:

- Eastern Cape Division, Grahamstown
- Eastern Cape Local Division, Bhishe
- Eastern Cape Local Division, Mthatha
- Eastern Cape Local Division, Port Elizabeth
- Free State Division, Bloemfontein
- Gauteng Division, Pretoria
- Gauteng Local Division, Johannesburg
- KwaZulu-Natal Division, Pietermaritzburg
- KwaZulu-Natal Local Division, Durban
- Limpopo Division, Polokwane
- Limpopo Local Division, Thohoyandou
- Mpumalanga Division, Nelspruit
- Northern Cape Division, Kimberley
- North West Division, Mahikeng
- Western Cape Division, Cape Town

Before appealing to the Supreme Court of Appeal against a High Court decision, the person wishing to appeal must get permission from the High Court that made the decision. The High Court must follow the decisions of the Constitutional Court in all cases heard by that court, and decisions of the Supreme Court of Appeal that were not taken on further appeal to the Constitutional Court.



**EXERCISE 9**

**Dismissal of judges**

In order to preserve the ‘separation of powers’ between the legislature, the executive and the judiciary, who should dismiss judges for bringing the judiciary into disrepute by undermining the confidence of the public in the courts? Think about how and when judges should be dismissed.

1. Should judges be dismissed by (a) the President; (b) the Judicial Service Commission or (c) parliament?
2. Consider the following cases and decide whether the judge should be dismissed for undermining the judiciary. Give reasons for your answers.
  - (a) A High Court judge who, while under the influence of alcohol, drives his car into a home owner’s wall and uses racist language against the owner when the owner complains and tries to get his licence details. The judge is subsequently convicted of drunken driving.
  - (b) A High Court judge who uses racist language in a private conversation which is later published on social media by the other person involved in the conversation.
  - (c) A High Court judge who tries to influence Constitutional Court judges to make a judgment in favour of the government and ruling party.
  - (d) A High Court judge who allows a private corporation to pay for his son’s university fees.



For additional resources from Civics Academy see: *What is the judiciary?* <http://www.civicsacademy.co.za/video/judiciary>

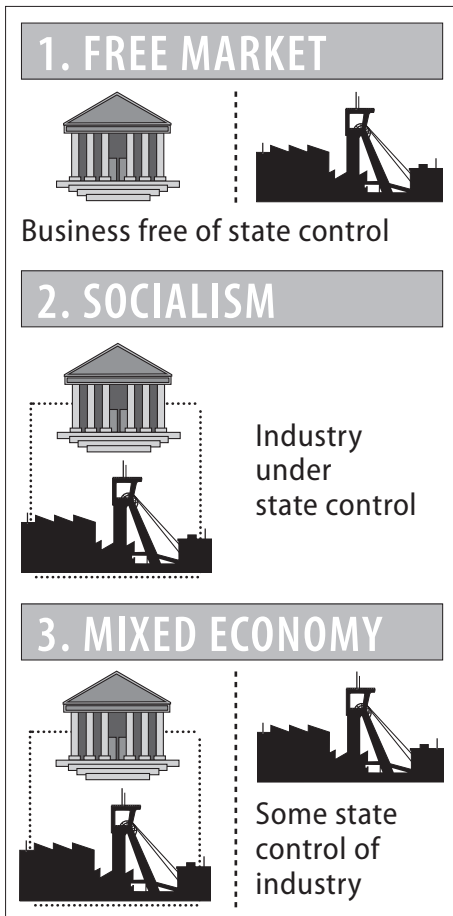
**2.5 ROLE OF GOVERNMENT IN THE ECONOMY**



*Concentration of too much wealth in the hands of a few can lead to discontent and revolution.*

A successful economy should be the goal of every democracy. History has shown that many democracies have been undermined by large-scale unemployment and poverty. Likewise, concentration of wealth in the hands of too few people has led to great discontent and sometimes revolution in different societies.

There are different theories as to the best role for government regarding the economy. One, known as the free enterprise or capitalist system, leaves most decisions to be made by private individuals and companies in the marketplace. This system is also referred to as a ‘free market economy’. It views individual property rights, competition and freedom of choice as important to the economy’s success. The free enterprise system is sometimes criticised for exploiting workers, failing to eliminate poverty and other social ills (eg crime), and for causing the failure of banking systems in several countries and the world economic recession in 2008. Another criticism is that it can lead to ‘state capture’ by rich businessmen who end up influencing government officials regarding government policy, as was alleged about the Gupta family in South Africa. Its defenders say it promotes individual initiative, productivity and some social services.



Three economic models.

Concentration of too much wealth in the hands of a few can lead to discontent and revolution.

A second economic system, often referred to as 'socialism', is characterised by central government control over decisions. It usually includes government ownership, or nationalisation of some industries, and an attempt to provide extensive social services such as medical care, housing and education to people free of charge. Critics of this approach say it reduces individual initiative, creates a large state bureaucracy and gives people less freedom in their lives. They point to a special form of 'socialism', called 'communism', which has been practised in the former Soviet Union and other countries such as North Korea, and has been viewed by some critics as a failure. Defenders of socialism say that Soviet-style communism failed because it was very authoritarian and undemocratic, used an approach emphasising collectives, and seriously restricted human rights. Supporters of socialism say it reduces unemployment and poverty and is better able to provide social and economic rights to all of the people, as they claim is happening in China.

Many people argue that neither 'capitalism' nor 'socialism' works well in their pure form and that a 'mixed economy' works best. This is sometimes called 'social democracy', where a free enterprise system is retained, but the state sets ground rules within which the economy operates. Under this system, private ownership of industry generally continues, but in some instances, certain industries may be tightly regulated or even taken over and 'nationalised' by the state. Under this system the state takes strong action to ensure equality of opportunity and social services for employed, poor or other disadvantaged citizens. Critics of this approach say that government often does a poor job of delivering services to people.

## EXERCISE 10

## Should the mines be nationalised?

For many years members of a minority, previously advantaged group in a country ran the government. Under this system the owners of gold mines supported the government and the government supported them, and they became very wealthy. A new majority of previously disadvantaged people is now in power and is considering whether or not it should take over or nationalise the mines. This would mean the government would own the mines and attempt to redistribute or share the wealth produced by these mines among more people, especially those in the majority previously disadvantaged group. The following are three points of view on this issue:

Owner of mine:



*"My family bought this mine. I've worked my whole life on making this mine successful. My father also did this before me. It is unfair to take my property from me or to tax me at high rates. If the mines are to continue to be successful my know-how is needed to run them."*

Mine-worker:



*"We have worked the mines for many years with low salaries and under poor working conditions. It is time for the government to take over these mines and share the wealth among all the workers. They can hire the former owner if they need his know-how. The mines are part of the national wealth of the country and should be owned by everyone."*

Member of parliament:



*"We need to redistribute the wealth, but having the government take over the mines and run them is not the way to do it. The government does not know how to work the mines. Experience in other countries shows that governments cannot run industries as well as private people with the experience and desire to do so. We could raise taxes on the profits of the mines and use them to redistribute wealth. We can pass regulations making the owners pay minimum wages and provide better working conditions."*

1. Role-play a debate between the three people listed above.
2. Which viewpoint most closely represents the systems of capitalism, socialism or a mixed economy?
3. What are the advantages and disadvantages of each approach? With which approach do you most agree? Why?
4. What other solutions might there be to this problem?

## 2.6 ROLE OF LOCAL GOVERNMENT IN DEMOCRACY

Local government is a form of public administration which exists as the lowest level of administration within a given state. The term is used to contrast it with offices at state level, which are referred to as the national government or central government, and, in federations, as the federal government. Local governments generally act within the powers delegated to them by legislation or directives of the higher level of government (provincial or national). In federal states, local government is usually the third (sometimes fourth) level of government, whereas in unitary states, local government usually occupies the second or third level of government, often with greater powers than higher-level administrative divisions. In South Africa the second level of government is the provinces, and the third level the local municipalities.

Local government is the level of public authority that people first look to for solving their immediate social problems. It is also the level of democracy in which the citizen has the most effective opportunity to participate actively and directly in decisions made for all of society. Local government, because of its smaller size and focus on local issues, provides opportunities for the use of direct democracy. Direct democracy involves engagement by citizens in virtually all issues affecting the community. In representative democracy, citizens choose candidates or political parties to make decisions for the entire community.

### 2.6.1 DUTIES AND RESPONSIBILITIES OF LOCAL MUNICIPALITIES

Municipalities are governed by municipal councils, which are made up of councillors elected by members of the community or appointed by the political party that receives the most votes in municipal elections. Councillors make decisions on behalf of the municipality and supervise the administration of the municipality. Local government is required to consult with communities and must involve them in its decision-making, because the community is affected by what the local municipalities decide.

The South African Constitution sets out five basic objectives for municipalities:

- to provide democratic and accountable government for local communities;
- to promote social and economic development of their communities;
- to promote a healthy and safe environment;
- to encourage the involvement of communities and community organisations in the matters of local government by consulting with



the community and letting the community participate in the decision-making process; and

- to provide basic services to communities in a sustainable manner – services such as water and sanitation, electricity, refuse removal, health and fire-fighting services, public transport and roads and parks.

Local governments around the world face common challenges today, among them the following:

- delivering fundamental social services such as water, electricity or transportation networks in a sustainable way;
- urbanisation, or the movement of people from rural areas to cities, and the pressures on the environment and on governmental capacity that this migration brings;
- job creation or creating opportunities for jobs and prosperity;
- fostering social cohesion and peace in increasingly diverse social settings, where several ethnic and religious groups must live side by side.

### 2.6.2 INTERGOVERNMENTAL RELATIONS AND CO-OPERATIVE GOVERNANCE

Inter-governmental relations are the organisation of the relationships between the three levels of government. The South African Constitution of 1996 provides that ‘the three spheres of government are distinctive, interdependent and interrelated’.

Co-operative governance means that the three levels of government should work together (co-operate) to provide citizens with a full package of services (governance).

Local government is represented in the National Council of the Provinces (NCOP) and other important institutions like the Financial and Fiscal Commission and the Budget Council. The South African Local Government Association (SALGA) is the official representative of local government. SALGA is made up of nine provincial associations. SALGA’s key strength is its strong legal and constitutional mandate, which gives it access to the highest decision-making bodies in government and allows it to influence local government through lobbying national and provincial authorities.

### 2.6.3 LOCAL GOVERNMENT ELECTIONS

The right to vote and hold those in office accountable at the ballot box is a necessary element of democracy. Local elections are therefore a central element of democratic governance closest to the people. In local elections citizens can personally know the candidates, can

offer direct knowledge and information on the issues, and can communicate with elected officials on a frequent basis.

In South Africa local elections in December 2000 were the first for newly created municipal structures that unified previously segregated areas. In the polling, the African National Congress (ANC) won most of the municipalities (170 of the nearly 240 contested). Significantly, the principal opposition party (the Democratic Alliance) gained ground (winning 22% of the overall vote) and won control of 18 municipal councils. The elections were watched carefully because they dealt with a number of significant issues affecting South Africa's ongoing process of democratisation after apartheid: the predominance of the ANC, the creation of viable multi-ethnic opposition parties, the role of traditional leaders, the importance of service delivery, and the enthusiasm of the people for democracy in general.

In the 2016 local government elections a coalition of opposition parties and support from other opposition parties led by the Democratic Alliance managed to gain control of the metropolitan municipalities of Nelson Mandela Bay (Port Elizabeth), City of Johannesburg and City of Tshwane (Pretoria), with the Democratic Alliance remaining in control of Cape Town. The majority of the other municipalities remained under the control of the African National Congress. The ANC controlled 163 municipalities, the DA 29 and the Inkatha Freedom Party 11.

There are three different categories of municipalities in South Africa and they have slightly different electoral systems.

#### 2.6.4 METROPOLITAN MUNICIPALITIES (CATEGORY A)

Metropolitan municipalities exist in the six biggest cities in South Africa. They have more than 500 000 voters each, and the metropolitan municipality co-ordinates the delivery of services to the whole area. There are metropolitan municipalities in Johannesburg, Cape Town, Ethekwini (Durban), Tshwane (Pretoria), Nelson Mandela Bay (Port Elizabeth) and Ekurhuleni (East Rand). These municipalities are broken up into wards. Half the councillors are elected through a proportional representation ballot, where voters vote for a party. The other half are elected as ward councillors by the residents in each ward.

#### 2.6.5 LOCAL MUNICIPALITIES (CATEGORY B)

Areas that fall outside the six metropolitan municipal areas are divided into local municipalities. There are 231 of these local municipalities and each municipality is broken up into wards. The residents in each

ward are represented by a ward councillor. Voters in these municipalities also vote for district councils. Half the local councillors are elected through a proportional representation ballot, where voters vote for a party. The other half are elected as ward councillors by the residents in each ward.

Only people who live in low population areas, like game parks, do not fall under local municipalities. These areas are called district management areas (DMA) and fall directly under the district municipality.

### 2.6.6 DISTRICT MUNICIPALITIES (CATEGORY C)

District municipalities are made up of a number of local municipalities that fall in one district. There are usually four to six local municipalities that come together in a district council and there are 47 district municipalities in South Africa. The district municipality has to co-ordinate development and delivery in the whole district.

The district council is made up of two types of councillors:

- Elected councillors – they are elected for the district council on a proportional representation ballot by all voters in the area (40% of the district councillors).
- Councillors who represent local municipalities in the area – they are local councillors sent by their council to represent it on the district council (60% of the district councillors).

Service delivery is one of the key features of a developmental state, to ensure that all its citizens, especially the poor and other vulnerable groups, have access to basic services. The South African Constitution provides that the government must ensure the provision of services is progressively expanded to all, within the limits of available resources and in a sustainable manner. Many of these services have been delegated to local municipalities.

### **EXERCISE 11**

#### **What is the role of local government in service delivery?**

Divide into groups of not more than five and discuss the role played by local government in the delivery of the following services:

1. Water
2. Sanitation
3. Electricity
4. Refuse removal

### 3. CHECKING THE ABUSE OF POWER



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#### OBJECTIVES

After reading this chapter you should be able to—

1. explain what is meant by an abuse of power;
2. define accountability and transparency;
3. explain the limits of accountability and transparency;
4. describe how the 'separation of powers' checks the abuse of power;
5. explain different domestic methods of checking abuse of power;
6. describe different international methods of checking abuse of power.



### 3.1 WHAT IS ABUSE OF POWER?

#### WHERE YOU LIVE

#### DO GOVERNMENT OFFICIALS ABUSE THEIR POWER?

In a democracy, the people give the government the power to govern on their behalf. Government officials should exercise this power in a positive manner. This means they should exercise it fairly and properly within the rules established by the constitution and the laws of the country.

An example of government exercising power in a positive manner is when the police arrest suspected criminals or a hijacker to protect its citizens.

The negative exercise of power is often referred to as abuse of power. This is when government officials exercise more power than the law has given them or when the government violates the law or constitution of the country. A common kind of abuse of power is corruption. For example, corruption exists when a government official's job is to issue licences to citizens, but she requires that citizens pay extra money to her personally before the licence is issued.

Another example is when the government collects taxes and spends it on building expensive luxury houses for their leaders or buying luxury jets to transport the leaders. Another example that is commonly found in South Africa is 'tenderpreneurs'. Tenderpreneurs are persons in government who abuse their political power and influence to secure government tenders and contracts. The word 'tenderpreneur' is a blending of two words, 'tender' and 'entrepreneur'.



*Police arrest a robber: a positive use of power.*



*Police beat up a suspect: a negative use (abuse) of power.*

Another type of abuse of power is violence by the state. An example is a police officer who stops people on the streets and beats them if they refuse to answer his questions, or where the police officials drag an arrested person behind a vehicle. In such a situation the police officials may be charged and convicted of a crime. The Marikana massacre is generally regarded as the biggest example of police brutality since the advent of democracy in South Africa. On 16 August 2012, the South African Police Service opened fire on a crowd of striking mine-workers at Marikana, about 100 km northwest of Johannesburg in the North West Province. The fateful event left 34 mine-workers dead and 78 wounded, and more than 250 people were arrested. The protesting mine-workers were demanding a wage increase at the Lonmin platinum mine.

## EXERCISE 1

### Identifying abuse of power

Read the following scenarios and determine whether each is an example of an abuse of power or of the positive exercise of power. Give reasons for your answer.

1. The principal of Dabane High School often comes to school drunk. One day when he arrives drunk, the pupils order him to leave the school premises and threaten him with violence if he returns.
2. After a long drought your government passes a law that restricts the use of water to four hours a day.



3. In your school the students vote to boycott classes until the government agrees to fix the toilets, which are in a very bad state of disrepair. After a week of class boycotts, the government decides to close your school. The police come to ensure that all students move out of the school premises.
4. You are driving your car and get stopped by a police officer for speeding. He orders you to park your car on the side of the road. The police officer tells you that if you give him a 'drink' he will let you go without giving you a speeding fine.
5. Parents barricade and close a public school in protest because the government failed to appoint teachers in the vacant posts.



6. A representative of a teachers' trade union offers to give a teacher a position as a principal at a school if the teacher pays him R20 000.
7. During #FeesMustFall protests against students having to pay higher university fees, students who are not part of the demonstrations but are trying to get away from the protests are arrested by the police.
8. Leigh is raped by her uncle Danny. The matter is not reported to the police but brought to the attention of the traditional leader in the community. The traditional leader of the community informs Danny that he has to pay Leigh's mother a cow as compensation for raping her daughter.
9. The People's Party has the majority seats in the local council after the last local government elections. They only approve contracts for the development of infrastructure if the development will take place in a ward where one of their members was elected as a councillor.



## 3.2 ACCOUNTABILITY AND TRANSPARENCY

In a democratic society, public service is not a privilege, it is a legitimate expectation. Public officials in institutions such as government, universities, schools and hospitals have a duty to answer to the public for their decisions, policies and actions. This is referred to as accountability.

Public administration in South Africa must be in line with the values and principles in the Constitution. Public services must be provided impartially, fairly, equitably and without bias or discrimination.

Public services must be accountable and transparent. This is set out in the Batho Pele principles which in Sotho means 'people first', and is the policy of government departments.



*Public officials must be accountable.*

In a democracy the principle of accountability is closely linked to transparency. Transparency is the creation of openness and access for the people to see clearly what is going on in the government and in society. Transparency imposes a duty on the government to disclose information and on the citizen to obtain that information. There can be little government accountability if citizens have no way of finding out what is happening. The South African Constitution grants everyone the right to information held by the state. To give effect to the right of access to information, parliament passed the Promotion of Access to Information Act, 2000.



*Transparency creates openness.*

In South Africa the courts regulate and control the exercise of public power by other branches of government. The Constitution provides everyone with the right to administrative action that is lawful, reasonable and procedurally fair. Everyone whose rights have been badly affected by administrative action has the right to be provided with written reasons. The Promotion of Administrative Justice Act, 2000, was passed to make sure that people have the right to just administrative action. Through this right a person can challenge bad administration or poor decision-making by public officials. An example would be if the Chief Director of Marine Coastal Management decides to allocate the maximum number of particular fish that fishermen may catch. If the Chief Director's allocation is less than what the fishermen wanted, they may ask the court to review the decision.

The best way to prevent abuse of power by a government is to remove the government through an election. The principles of accountability and transparency make it easier for citizens to use democratic methods to challenge the abuse of power by the government during its term of office.



## EXERCISE 2

## The Hope High School Case

The scholars of Hope High School democratically elected the Learner Representative Council (LRC) to represent their interests in school administration matters. The school authorities notified the LRC that due to procurement problems at the Department of Education, textbooks will not be provided to all learners. In a meeting with the school authorities the LRC agrees, without consulting the learners, to allow the authorities to distribute textbooks to only a few learners. They also agree that every member of the LRC will receive textbooks. In return, the school authorities agree to erect a new sports stadium for the school.



Divide into groups and answer the following questions. Give reasons for your answers.

1. Is the LRC accountable to the student body?
2. Did the LRC act in accordance with the principle of transparency?
3. If you were an LRC member, how would you have handled the matter?
4. What can the student body do if they are unhappy with the way in which the LRC handled the matter?

### 3.2.1 LIMITING ACCOUNTABILITY AND TRANSPARENCY

In a democratic country there are times when the government limits accountability and transparency. Although people differ on when limits are appropriate, some limits are recognised throughout the democratic world as necessary to enable governments to run the affairs of their countries.



*During a state of emergency the police and armed forces are granted special powers to protect life, liberty and property.*

#### 3.2.1.1 LIMITING ACCOUNTABILITY AND TRANSPARENCY DURING A STATE OF EMERGENCY

Accountability is limited when a state of emergency is declared by the government. A state of emergency is declared when there is instability or civil unrest in the country. During a state of emergency the police and armed forces are granted special powers to protect life, liberty and property and the normal procedures are temporarily suspended. The police or armed forces are often granted immunity from prosecution for actions they may commit under a state of emergency. However, they must conduct themselves responsibly and act lawfully in discharging their duties.

During the apartheid era the government abused states of emergency to justify infringing on people's human rights; for example, political prisoners were detained without a trial for very long periods of time. Under our present democracy, human rights are protected to ensure that the atrocities of apartheid are never repeated. Even if the government declares a state of emergency, there are certain human rights that may never be suspended. These are called 'non-derogable rights' and include the rights to equality, human dignity and life.

Certain parts of the right to freedom and security of the person are also protected during a state of emergency. People may not be tortured in any way and may not be treated or punished in a cruel, inhuman or degrading way. During a state of emergency people may not be subjected to medical or scientific experiments without their consent. No one may be subjected to slavery or servitude (ie being forced to work for others).

Children must be protected during a state of emergency. Children's rights to be protected from bad treatment, neglect, abuse or degradation, or labour practices that exploit them must be maintained at all times. Children may not be detained, except as a measure of last resort, and where they are detained, they must be kept separate from persons over the age of 18 and must be treated in a manner that takes into account the child's age. Children aged 15 years or younger may not be used in armed conflict.

During a state of emergency arrested, detained and accused persons have the following rights: (a) the right to remain silent; (b) the right to be informed immediately of the right to remain silent and what may happen if they do not remain silent; (c) the right not to be forced to make any confession or admission that could be used in evidence against them; (d) the right to challenge the lawfulness of their detention in person before a court; and (e) if the detention is unlawful, to be released.

Every accused person has a right to a fair trial, which includes the right—

- (a) to be informed of the charge with sufficient detail to answer it;
- (b) to have adequate time and facilities to prepare a defence;
- (c) to get a public trial before an ordinary court;
- (d) to have their trial begin and conclude without unreasonable delay;
- (e) to be present when being tried;
- (f) to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;
- (g) to have a legal practitioner assigned to the accused person by the state and at the state's expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
- (h) to be presumed innocent, to remain silent, and not to testify during the proceedings;
- (i) to adduce and challenge evidence;
- (j) not to be compelled to give self-incriminating evidence;
- (k) to be tried in a language that the accused person understands or, if that is not practicable, to have proceedings interpreted in that language;
- (l) not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;


- (m) not to be tried for an offence in respect of an act or omission for which that person has been previously either acquitted or convicted;
- (n) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing;
- (o) of appeal to, or review by, a higher court.

Where evidence was obtained by violating any of the rights in the bill of rights, that evidence must be excluded if the inclusion of the evidence would make the trial unfair or undermine the administration of justice.

A state of emergency should only be declared for a limited period. As soon as stability is restored in the country, the state of emergency should be lifted.

### *3.2.1.2 LIMITING ACCOUNTABILITY AND TRANSPARENCY DURING THE TRANSITION TO DEMOCRACY*

When countries change from a dictatorship to a democracy they sometimes pass laws that grant indemnity from prosecution to people who committed 'political crimes' under the dictatorship. Indemnity, also called amnesty, is granted for past actions. Some people are opposed to the granting of indemnity for past 'political crimes', because they believe it prevents criminals from being held accountable for their crimes. Others support the belief that digging up the past does not benefit a new democracy. After the end of apartheid in South Africa, the government of national unity set up the Truth and Reconciliation Commission (TRC) to enable South Africans to come to terms with their past. The TRC was aimed at giving people who had harmed people for political reasons an opportunity to confess to their crimes and to be given indemnity from prosecution and to allow the victims of their crimes an opportunity to tell their stories and to be given some form of compensation.




Indemnity for past political crimes is sometimes granted by a new government.

### *3.2.1.3 OTHER SITUATIONS LIMITING ACCOUNTABILITY AND TRANSPARENCY*

In a democracy, the President has special powers to grant pardons to sentenced prisoners. The President may order that a prisoner be released from prison. A presidential pardon limits the accountability of the person who receives the pardon.

Some public officials, such as judges and magistrates, are granted immunity from legal action that may arise from their decisions. They are not held liable even if a court of appeal declares their





Members of parliament, judges and some other officials may be granted immunity from prosecution to enable them to perform their duties without fear.

decisions unfair or unjust. Even though this immunity limits the accountability of public officials, people support this kind of immunity because it protects officials who are working for the government and trying to perform their job responsibly. However, if these public officials take bribes or act out of spite or malice, they will be held accountable.

In a democracy laws are passed through a process of open parliamentary debates and arguments. Members of parliament are granted immunity from prosecution for statements made in the course of parliamentary debates. While this immunity limits accountability, it is designed to ensure openness so that all facts, opinions and perceptions are heard in parliament before any law is passed.


### EXERCISE 3

#### Should the government limit accountability?

A country changes from a single-party authoritarian government to a multi-party democracy. The President of the outgoing authoritarian government and her party members are arrested because during their rule they committed cruel political crimes. The transitional government grants an amnesty to the past President and her party members. They are released and allowed to participate in the forthcoming elections. Some people in the country strongly believe that the past President and her party members must be tried for their crimes and should not participate in the elections. Others believe that peace and forgiveness are important for the future of the country.

Divide into two groups and prepare to conduct a debate. One group should argue in favour of the amnesty, and the other group against it. Consider the following:

1. Was the transitional government justified in declaring the amnesty for political crimes?
2. Does the declaration of the amnesty limit the duty of accountability?
3. If you were in the transitional government, what action would you recommend should be taken concerning the past President and her party members? Give reasons for your answers.



National security is a valid reason to limit transparency.

Sometimes circumstances exist that justify a government in limiting transparency. One situation is when government leaders believe that the national security of the country is threatened. For example, if the President of a country obtains reliable information that a group of 'terrorists' is plotting to bomb the country, he or she might keep this information secret until after an investigation. 'National security' is a valid reason to limit transparency, but sometimes government officials use this reason to cover up abuse of power or to restrict criticism of government policies.

**EXERCISE 4****The weapon of mass destruction TV debate**

Read the following case in order to prepare a debate. Your country is at war with a powerful neighbouring state. You suspect that your government has developed a weapon of mass destruction but your government refuses to confirm or deny this. The citizens of your country demand to know whether the government has a weapon of mass destruction. They want to know whether the weapon of mass destruction will be used in the present war.

The rumours are that your country is losing the war. Morale in the army is low and the number of casualties is higher than figures released by the government. There is a strong possibility that out of desperation your government may use the weapon of mass destruction. Your government refuses to answer any questions about the war. It says that military information is highly confidential.



Prepare to conduct a debate in which the following groups are represented:

- the church community;
- the Anti-Weapons of Mass Destruction Association;
- the Women for Peace League;
- a representative from the President's office.

In your debate consider the following:

1. What is the position of your group? Give reasons.
2. Should the government release information about the weapon of mass destruction and the war? Why or why not?
3. Is your government undermining the principles of accountability and transparency?
4. Should the losing country use the weapon of mass destruction to end the war? Why or why not?

Give reasons for your arguments.

**EXERCISE 5****Did the state of emergency limit accountability?**

Your country is experiencing severe drought conditions. A majority of citizens are poor and unemployed. The crime rate is high. Your government places a 14% VAT (value-added tax) on the bread price. The government says that the bread tax is necessary because the drought has caused a shortage of wheat. In protest the citizens of your country hold mass demonstrations and protest marches. Looting, vandalism and violence break out countrywide. The government declares a state of emergency, introduces curfew laws and gives the police powers to arrest and detain people without a trial.

1. Was the government justified in introducing the bread tax, declaring the state of emergency with curfew laws, and granting the police special powers of arrest? Why or why not?
2. Did the government actions limit accountability? If yes, how?
3. If you were a government official, what would you do about the violence in your country?

Give reasons for your answers.

**3.3 DOMESTIC METHODS OF CHECKING THE ABUSE OF POWER**

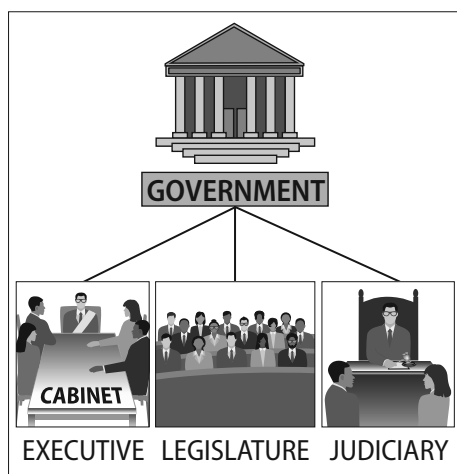
In addition to accountability and transparency, democratic governments use 'structural methods' to check the abuse of power. One structural method is the separation of powers between the legislative, the executive and the judicial branches of government (see Chapter 2).

Many of the signposts to democracy are methods of checking the abuse of power (see Chapter 1). Government power can be checked by (a) adopting a bill of rights that protects individual rights and liberties; (b) observing the rule of law; (c) adopting the multi-party system of government; and (d) empowering civil society to participate and challenge abuses of power by the government.

Other methods of checking the abuse of power include (a) the use of publicity and media; (b) the adoption and use of fair procedures by the government; (c) the creation of an office of an ombudsman or a Public Protector who attends to the complaints of the public; (d) the establishment of special commissions of inquiry; and (e) pressure by the international community.

**3.3.1 SEPARATION OF POWERS**

Democracy recognises the need to spread power and not to concentrate it in any branch of government. History shows that when one branch of government has too much power, the likelihood of the abuse of power is great. Democratic countries use the separation of powers to enable the different branches of government to check or limit one another's powers. This is called 'checks and balances'.




*The separation of powers promotes accountability and transparency.*

Although their functions are interrelated, each branch of government is granted its own powers which no other branch can take over.

The legislature is the law-making branch of government. It is often called a parliament. The executive consists of the President or the Prime Minister and cabinet ministers. It makes policy decisions and carries out the laws passed by the legislative branch (see generally Chapter 2).

The judiciary is composed of magistrates and judges and all other officers of the court system. The role of the courts in a democracy is to apply, interpret, develop and enforce the laws and to provide justice for the citizens. The courts have the power of judicial review, which means that they can decide whether government actions are in accordance with the constitution. Courts can declare null and void any government action that violates the constitution (see generally Chapter 2).



In a democracy, courts can declare any government action that violates the constitution null and void.

No branch of government can act on its own. For example, in some countries the President can nominate judges, but the nominees must be confirmed by officials in the executive or the legislative branch of government. In South Africa judges are nominated for appointment by the Judicial Services Commission (JSC). The President then appoints judges from the list of recommendations from the JSC (see Chapter 2). Another example is that if elderly citizens experience unreasonably long delays before receiving their pensions, they can obtain a court order to force officials in the executive department to release the pensions on time. The separation of powers in a democracy promotes accountability and transparency. Each branch of government answers to the other branches.



*A bill of rights limits and checks the powers of government.*

### 3.3.2 A BILL OF RIGHTS

A bill of rights contains a list of freedoms and rights that are protected. It may be included in the body of the constitution or issued as a separate document. The South African Bill of Rights is contained in Chapter 2 of the Constitution. A bill of rights limits and checks the government's powers. Any act that goes against the bill of rights and constitution can be challenged in the courts. For example, in a country where freedom of expression is protected in a bill of rights, the government cannot, without good reason, limit that freedom through censorship.



## 3.3.3 THE RULE OF LAW



*In a democracy the constitution is supreme.*

For a democratic country to function properly, it is necessary that the government and the citizens respect the 'rule of law'. The 'rule of law' means that the law is enforced equally, fairly and consistently, and that the government does not make arbitrary decisions. Courts in South Africa have said that parliament cannot implement laws where it did not first consult the people about the proposed law. Respect for the rule of law also means that no person, not even an elected President or Prime Minister, is above the law. In our democracy the following statement should be respected: 'The Constitution in South Africa is supreme.'

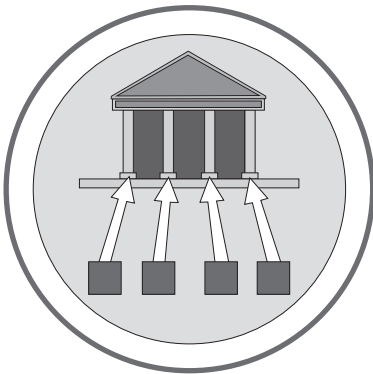
**EXERCISE 6****Is the head of state above the law?**

*Two high-ranking military officers are executed.*

Your country is ruled by a military dictator, General Pao Min, who came into power in a military coup. Shortly after taking power, he instructed the army to kill two high-ranking officers because he had been informed that the officers were plotting to overthrow his government.

A few years later the generals who carried out orders to kill the two officers resign from the army. They inform the Director of Public Prosecutions that they killed the officers under orders from Pao Min. The Director of Public Prosecutions charges Pao Min with the murder of the two officers and he goes on trial.

1. Give the arguments on behalf of Pao Min.
2. Give the arguments on behalf of the Director of Public Prosecutions.
3. If you were the judge in this matter, how would you decide the case?
4. Following the judge's decision, discuss which were the best arguments for each side.



Opposition parties operate as watchdogs over the ruling party.

### 3.3.4 MULTI-PARTY DEMOCRACY

One way of checking the abuse of power is to have a multi-party system of government. This means that more than one party takes part in the elections and participates in government. In a democracy, opposition parties that present different views from those of the governing party are necessary. Opposition parties operate as watchdogs over the ruling party. A democracy is healthy when it is possible for the opposition to win an election and form a new government. Multi-party democracy works well when parties are evenly represented. Where the governing party has an overwhelming majority it is difficult for the opposition to hold the government accountable (see Chapter 1).

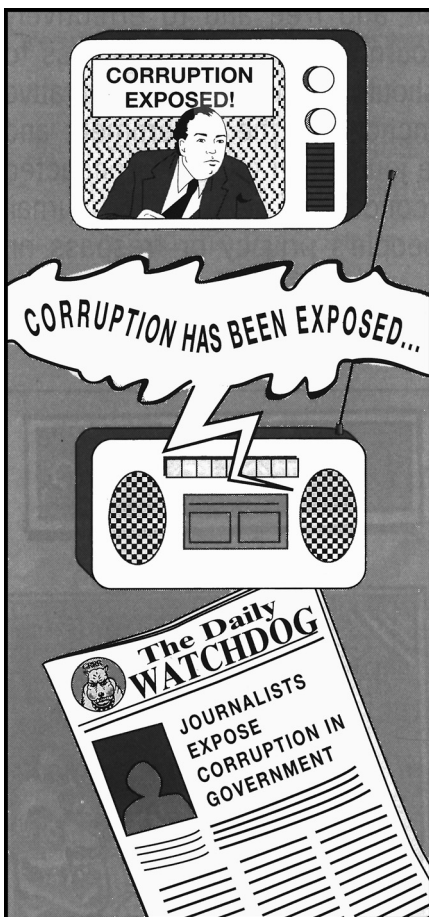
### 3.3.5 PUBLICITY AND THE MEDIA

One way in which the government publicises information is through the media, including electronic media (television and radio) and print media (newspapers, magazines, tabloids and books). The media helps uncover the abuse of power by the government. Social media is a powerful tool that can be used to disclose abuse of power. When claims were being made that the state had been captured by powerful business people, a previous minister used social media to disclose her dealings with the business people. The ex-minister tweeted that she had been offered a cabinet position by an influential family that is close friends with the President. The tweet went viral and soon everyone was talking about it.

Electronic and print media can promote governmental transparency and accountability by creating public awareness of government actions. The media also promotes communication because it enables the government to learn about the views of its citizens and the citizens to learn about the views of government leaders and the opposition.

In many countries the media helps to prevent government corruption by publicising information about corruption. This has led to the resignation of government officials and the withdrawal of candidates from corrupt election campaigns.

The media has been described as having a ‘policing role’ against government inefficiency, corruption and mismanagement. Politicians around the world often worry more about publicity than other checks on the abuse of power. This is because negative publicity in the media can result in politicians losing support among voters and losing the next election.

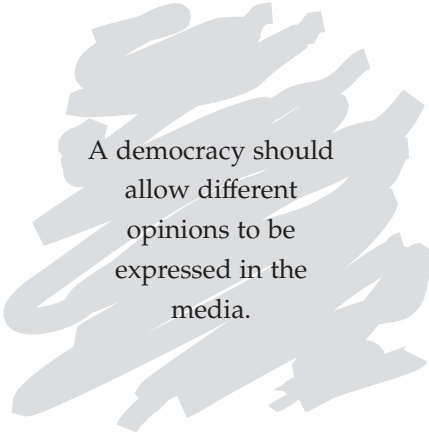


The media has a ‘policing role’ against government inefficiency, corruption and mismanagement.

Because the media is so powerful, some governments attempt to control it. Governments or their allies often own newspapers and radio and television stations and control what is reported. Citizens need to be aware of who owns the media in their countries and whether it is independent or controlled by the government.

Governments can also control the media by censoring what is reported or by intimidating or prosecuting those who write or say things critical of the government. These are all attempts to control what citizens see, hear or think. A democracy should allow different opinions to be expressed in the media. This allows citizens to hear many different points of view and then decide what they wish to think, say and do.

However, the media cannot print or broadcast without any limits. When reporting news, it should print or broadcast facts, not fiction or 'fake news'. If it makes up lies, it should be held accountable. Most democracies also have restrictions against obscenity or pornography in the media.



A democracy should allow different opinions to be expressed in the media.

Sometimes government threaten to establish regulatory bodies such as press councils or monitoring boards to police the media. In most democratic countries the media regulates itself through monitoring bodies. In South Africa the Constitution provides for the establishment of an independent broadcasting authority that is responsible for regulating the broadcasting media. The independent broadcasting authority must ensure that broadcasting that takes place is in the public interest, is fair and broadly reflects the different views of South African society. The Independent Communications Authority of South Africa (ICASA) is the regulator for the South African communications, broadcasting and postal services sector. ICASA acts as a watchdog of the telecommunications, broadcasting and postal industries. It is mandated to receive complaints from the public about services provided by telecommunications, broadcasting and postal licensees.

For the media to be fair and free and to check abuse of power effectively, journalists must have access to information. Journalists should also play an investigative role in examining the functions of the government and its officials. Investigative journalism must be conducted according to a code of conduct. For example, journalists should not invade people's privacy or trespass on people's property.





Governments sometimes try to control the media by censoring what is reported or harassing or prosecuting those critical of the government.

## EXERCISE 7

### The Drakengate case

Your country, Draken, is a member of the International Peace Organisation (IPO). IPO agreed in its international peace convention not to supply arms to groups that are planning to overthrow a democratic government. Draken also has laws which prohibit it from providing arms to groups fighting to overthrow a democratic government.

Dan Deeper and Kwizzy Kwazi are newspaper reporters for 'The Eye'. They receive information that Draken is supplying arms to the Berg Liberation Organisation (BLO), which is planning to overthrow the stable democratic government of the neighbouring country, Berg. They also receive information that the President of Draken knows that members of his government are selling arms to the BLO. To confirm their suspicions and uncover this, Deeper and Kwazi break into the offices of the government and read and photocopy confidential documents of the government. Their suspicions are eventually confirmed and they publicise the contents of the confidential documents. As a result there is a big outcry and pressure for the President to resign.

1. Was there an abuse of power by the Draken government? Give your reasons.
2. Were the methods used by Deeper and Kwazi to uncover the scandal justified? Should Deeper and Kwazi be prosecuted? Give your reasons.
3. Should the President resign? Give your reasons.



**EXERCISE 8****The independent broadcaster bans footage of violent protests**

There has been a dramatic increase in service delivery protests. People do not limit themselves to peaceful protest. Protests have been marred by extreme violence, intimidation and intentional damage to property. The CEO of the broadcasting corporation instructs the journalists not to write any stories on the public protests and not to record any video footage. He says the reason for his decision is to educate the public that violent protests will not get them any attention. He claims that this will encourage citizens to resort to peaceful protests.

1. Do you think that the CEO abused her powers when she banned the covering of violent protests? Give reasons.
2. Discuss whether the ban on covering protests is censorship.
3. A complaint questioning the correctness of the broadcaster's decision to stop showing footage of violent protests is lodged with ICASA. A public hearing is held to determine whether the decision should be overturned. Divide into small groups of not more than five persons. Prepare a role-play where small groups will make representations to ICASA:
  - (a) One group must defend the broadcaster's decision and motivate why the decision is correct and is not censorship.
  - (b) Another group must represent the people who are unhappy about the decision and must state reasons why the decision is censorship.

**3.3.6 FAIR PROCEDURES**

Fair procedures protect citizens from arbitrary government decisions and prevent the abuse of power.

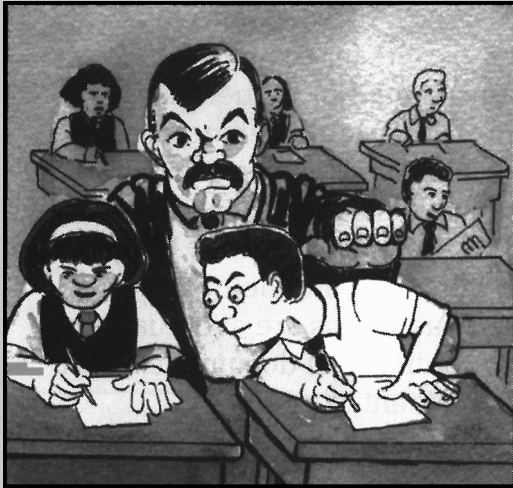
An important way to check the abuse of power is to establish fair procedures, especially when dealing with the public. These procedures are sometimes called 'due process of law'. Due process of law requires the government to give notice to citizens before it takes certain actions. Sometimes a hearing is necessary.

The government should always make fair and justified decisions. Fair procedures protect citizens from arbitrary government decisions. They prevent the abuse of power. For example, a person whose pension is withdrawn is entitled to prior notice, a fair hearing and a written decision with stated reasons.

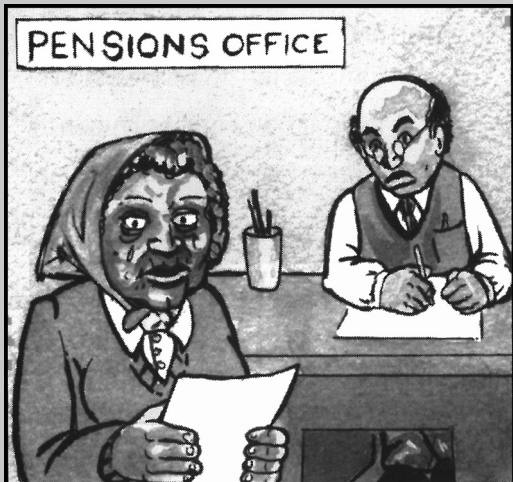


**EXERCISE 9****Were the procedures fair?**

Read the following factual situations and decide whether in each instance the procedures followed were fair or not. Give reasons for your answer.



1. A student is suspected of copying from another student during examinations. He is immediately expelled from the examination room. The following day he receives a letter from the principal which informs him that he is disqualified from the entire examination and suspended from school for six weeks.



2. A senior official at the Department of Social Development believes that a grandmother who looks after her orphaned grandchildren is not entitled to receive a child support grant for the children. The official withdraws her pension.



3. Your neighbour runs a butchery. Some community members lodge complaints with the licensing board claiming that your neighbour has been selling horse meat as beef and has been adding pork to halaal and kosher meat products. The licensing board writes her a letter informing her about the complaints and that they have withdrawn her license. She was never informed of the complaints and did not have an opportunity to answer to the complaints at a hearing.

### 3.3.7 STATE INSTITUTIONS THAT SUPPORT A CONSTITUTIONAL DEMOCRACY

The Constitution of South Africa established a number of state institutions to strengthen democracy. They are commonly referred to as 'Chapter 9 institutions' because they are found in Chapter 9 of the Constitution. These institutions are the Public Protector, the Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Commission for Gender Equality, the Auditor-General and the Electoral Commission. These institutions are independent and subject only to the provisions of the South African Constitution and the law. They must at all times be impartial and must exercise their powers without fear, favour or prejudice. Other parts of government must assist and protect these institutions to ensure that they remain independent and impartial. The dignity and effectiveness of the Chapter 9 institutions must be promoted and protected. No person or part of government may interfere with the functioning of these institutions. The Chapter 9 institutions are accountable to the National Assembly. They are essential for good governance in South Africa.

Where a Chapter 9 institution has a provincial office that is not carrying out its duties properly, persons who have been affected by such failure should contact the national office of the institution and request it to intervene. There have been allegations that sometimes the provincial offices become 'captured' by particular party interests and the national offices have had to intervene to overcome this.

#### 3.3.7.1 PUBLIC PROTECTOR

Some democracies create an office for an independent public official called an ombudsperson. In South Africa this person is called the Public Protector. Other countries may choose to call the public official an ombudsman. His or her main function is to investigate public complaints against government officials. The Public Protector must not be appointed from the ranks of the supporters of the government. He or she must not owe allegiance to any political party or leader. A person who becomes the Public Protector should resign from any political position.

The office of the Public Protector investigates cases of bad administration, improper conduct, and abuse of power by sections of the government, including corruption and conduct by public officials that cause prejudice to the public. Examples of cases investigated by the Public Protector include (a) excessive expenditure on security upgrades to private homes of state officials, such as happened with the Nkandla residence of the President; (b) people who are appointed



The Public Protector's main function is to investigate public complaints against government officials.

to lucrative positions without the required qualifications, as was the case of a senior SABC administrator; (c) elderly people who experience delays in receiving their pensions; and (d) school-leavers whose results were withheld for not paying school fees. The services of an ombudsperson are often provided free to the public.

The Public Protector can recommend appropriate remedies to the government, and normally performs the following functions:

- (a) making sure that public officials perform their duties in a responsible and accountable manner;
- (b) recommending amendments to bad laws;
- (c) providing a place for citizens where they can complain about public officials;
- (d) serving as a watchdog over the government's administrative functions;
- (e) recommending that money wrongly spent must be paid back.

### CASE STUDY: THE NKANDLA CASE

In the Constitutional Court case of *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* (2016) the Public Protector investigated allegations of improper conduct or irregular expenditure on the security upgrades at the private residence of the President at Nkandla. She concluded that the President had failed to act in line with certain of his constitutional and ethical obligations by knowingly deriving undue benefit from the irregular deployment of state resources. Exercising her constitutional powers to take appropriate remedial action, she directed that the President should work out and pay a fair share of the expenses that he and his family were not entitled to. The Public Protector's report was sent not only to the President, but also to the National Assembly to make sure that he complied with the action recommended by the Public Protector. For well over a year, neither the President nor the National Assembly did what they were required to do in terms of the remedial action because they said that it was only a recommendation. The court said that parliament is the voice of all South Africans, especially the poor, the voiceless and the least remembered. The court held that it was compulsory for the President and parliament to comply with the remedial action recommended by the Public Protector.



#### *3.3.7.2 HUMAN RIGHTS COMMISSION*

The Human Rights Commission (HRC) is a national institution established to support constitutional democracy. It must promote respect for, observance of and protection of human rights for everyone without fear or favour. It monitors respect for human rights in the country. It investigates and reports on the observance of human rights in the country. Where it finds that a human rights abuse has taken place, it takes steps to appropriately address the human rights abuse that occurred. The Commission is further tasked with conducting research and educating the public on human rights.

State organisations must report annually to the HRC on which steps they have taken towards realising the rights to access to housing, health care, food, water, social security, education and the environment. The types of cases investigated by the HRC have included allegations of racism, hate speech, promoting xenophobia, housing shortages for poor people and similar matters.

#### *3.3.7.3 COMMISSION FOR THE PROMOTION AND PROTECTION OF RIGHTS OF CULTURAL, RELIGIOUS AND LINGUISTIC COMMUNITIES*

The Commission was established in order to protect and promote cultural, religious and linguistic community rights. It must promote and develop peace, friendship, humanity, tolerance and national unity among and within cultural, religious and linguistic communities on the basis of equality, non-discrimination and freedom of association. The Commission must foster mutual respect among cultural, religious and linguistic communities and promote the right of communities to develop their historically diminished heritage. It can recommend the establishment or recognition of community councils.

#### *3.3.7.4 COMMISSION ON GENDER EQUALITY*

The Gender Commission is an independent body that monitors gender equality in South Africa. Its functions include monitoring and evaluating the policies and practices of the government, the private sector and other organisations to ensure that they promote and protect gender equality. The Commission's functions include—

- (a) providing public education and information;
- (b) reviewing existing and upcoming legislation from a gender perspective;
- (c) investigating inequality;
- (d) commissioning research and making recommendations to parliament or other authorities;

- (e) investigating complaints on any gender-related issue;
- (f) monitoring and reporting on compliance with international conventions.

#### 3.3.7.5 AUDITOR-GENERAL

The Auditor-General of South Africa is responsible for auditing and monitoring financial expenditure in the public sector. The Auditor-General annually produces audit reports on all government departments, public entities, municipalities and public institutions. The Auditor-General analyses transactions and expresses an opinion on whether there has been compliance with either the Public Finance Management Act or the Municipal Finance Management Act, and also conducts special audits. These reports must enable parliamentarians to hold cabinet members accountable for how they spend taxpayers' money.

#### 3.3.7.6 INDEPENDENT ELECTORAL COMMISSION

The Independent Electoral Commission of South Africa is an independent body that is responsible for managing elections at all levels of government. It must manage all elections of national, provincial and local municipal legislative bodies. It must ensure that elections are regular, free and fair. It declares the results of each election. The Electoral Commission compiles and maintains a voters' roll (see Chapter 5).

## EXERCISE 10

### Which Chapter 9 institution can assist?

Read the scenarios below and discuss which of the Chapter 9 institutions should deal with the matter.

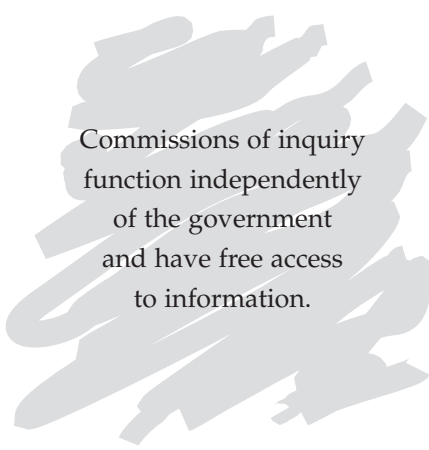
1. The community of Klipgat has been without water for five weeks. The local municipality in Klipgat, despite numerous requests by the residents of Klipgat, fails to take any steps to fix the water supply. Klipgat has about 3 500 households. The water shortage problem in the area has been long-standing since 1994. The Klipgat municipality provides water with water tanks, but it never informs the households when the tanks will be provided. The residents receive about four water tanks for the entire Klipgat community. The capacity of each water tank is about 3 000 litres and the tanks are refilled twice a week on Mondays and Thursdays. The trucks that refill the water tanks are construction trucks and the residents allege that the water appears dirty and not healthy for human consumption. The water supply is inadequate as the tanks are empty almost immediately after they have been refilled during the day and the people who are normally at work come back to empty water tanks in the evening.

Due to the inadequate water supply and the fact that the water tanks are only refilled twice a week, the residents often have to go for days without water. The schoolchildren lose out on valuable study time as they have to travel long distances to draw water from the water tanks. The elderly and the sick spend money in hiring people to fetch water for them. The residents claim that their constitutional right to have access to sufficient water is being infringed.



2. Visits by representatives of the opposition to various schools in the province reveal that the majority of the schools have been provided with incorrect textbooks and in many instances no books have been provided at all by the Department of Education. A study reveals that 69% of the books that were delivered were in the incorrect language, 75% of the books that were delivered were in short supply and 8% of the books were over-supplied. Books that were needed for the first term were only supplied at the end of March, after the academic year had already started. Opposition parties claim that the Department of Education in the province has not adequately monitored the ordering of school books in the province.
3. Rumours are circulating that the governing party in a municipality has approved R90 million to upgrade the City Hall. Councillors claim that the service provider was paid the full R90 million and that no work was done on the City Hall. They also claim that incorrect procedures were followed when the tender was allocated.
4. During local government elections one of the political parties standing for election in Soweto claims that ballot boxes with ballot papers inside them were stolen.
5. A municipality decides to award bursaries to deserving female candidates. It is a condition for the bursary that young women recipients must remain virgins for the duration of the time that they receive the bursary. The conditions of the bursary require that all recipients regularly undergo virginity testing.

#### 3.3.7.7 SPECIAL COMMISSIONS OF INQUIRY



Commissions of inquiry function independently of the government and have free access to information.

Commissions of inquiry are appointed by the government. They investigate, report and make recommendations concerning allegations of corrupt administration, injustice, unfair treatment and inefficiency in public affairs. They function independently of the government and have free access to information. They often perform tasks such as inquiring into charges of police brutality, reviewing tax legislation, or advising on the restructuring of the court system. Many commissions are temporary and stop working when they have completed their task.

#### CASE STUDY: THE MARIKANA MASSACRE

The Marikana Commission of Inquiry, headed by Judge Farlam, was established to investigate matters of public, national and international concern arising from the tragic incidents that occurred at the Lonmin Mine in Marikana, in the North West Province. On 16 August 2012, the South African Police Service opened fire on a crowd of striking mine-workers at Marikana, about 100 km northwest of Johannesburg in the North West Province. The police conduct resulted in 34 mine-workers being killed, 78 wounded and more than 250 people arrested. The protesting mine-workers were demanding a wage increase at the Lonmin platinum mine. The commission recommended that senior police officers and others responsible for the killings be investigated by the National Prosecuting Authority to decide whether they should be prosecuted.

**EXERCISE 11****Public Protector or commission: which should be used?**

Divide into small groups and decide if the Public Protector or a commission of inquiry should have been used in the following factual situations. Give reasons for your answer.

1. After the Marikana massacre there was a public outcry about the police resorting to deadly violence. It is claimed that this was the worst example of police brutality since the new democracy of South Africa. The police however claim that they were under attack from the mine-workers armed with dangerous weapons, including machetes, spears and clubs when they opened fire with automatic weapons into the crowd a few metres away.
2. Your local government is developing low-cost housing for squatters living around the city. The local authorities are in charge of the allocation of houses. The squatters complain that the local officials are accepting bribes for allocating houses in a certain way.
3. You go to your local Department of Home Affairs office to apply for your passport. The queue is very long. The officials at the counter help all the black people first and ignore the white people in the queue. At the end of the day the white people are told that they cannot be helped and that they should to come back another day.
4. In a residential hostel managed by a municipality, 72 people are killed over a period of 18 months. Residents of the hostel claim that that they are being forced to vacate their beds in order to allow people from particular ethnic groups or a particular faction of the party controlling the municipality to be housed in the hostel. If they refuse to leave they will be killed. They allege that the local ward councillor is involved in the 'bed selling' scheme and is working with corrupt police officers and armed gangs of criminals. The concerned residents have complained to the municipality, the police, the Independent Police Investigative Directorate, the local offices of the Human Rights Commission, the Gender Commission and the Public Protector, but nothing is done to halt the killings.



For additional resources from Civics Academy see: *What is the Separation of Powers?* <http://www.civicsacademy.co.za/video/separation-of-powers>

**3.4 INTERNATIONAL METHODS OF CHECKING THE ABUSE OF POWER**

The advances in telecommunications (eg telephones, mobile phones, fax machines, satellite television, computers, email and social media platforms such as Facebook and Twitter) and transportation (eg aircraft) have brought about better communication between the nations and peoples of the world. Events occurring in one country can be quickly publicised worldwide. An example of the news of events spreading quickly is that of the 'Arab Spring' uprisings. The 'Arab Spring' was a wave of demonstrations and protests against undemocratic governments that spread throughout the Arab world. Another example is reports of the damage and deaths caused in Aleppo, Syria, as a result of the bombing of civilians and hospitals by Russian and Syrian forces.

These forms of communication have created an international or global community. The experience of two World Wars taught the international community that fair and just democratic principles should be adopted to protect fundamental human rights and liberties, and these were subsequently enshrined in Universal Declaration of Human Rights. Members of the international community have developed ways to



apply pressure on nations whose governments undermine basic human rights and liberties.

The international community applies pressure through sanctions and other methods of isolating countries. It does this through organisations such as the United Nations, and through the work of non-governmental organisations, such as the actions taken by the international community during the apartheid regime in South Africa. When the international community applies this type of pressure, it can check the abuse of power by governments. However, this has become increasingly difficult with the rise in global terrorism.




*The UN General Assembly.*

#### 3.4.1 THE UNITED NATIONS ORGANISATION

The UN is composed of 193 member nations and works to maintain international peace and security.

To maintain international peace and security after World War II, a group of nations formed the United Nations Organisation (UN). The UN is composed of 193 member nations. The UN encourages a democratic code of conduct and international accountability and has had an important influence on international peace and stability. It occasionally imposes sanctions and where necessary supports military intervention (eg during the Rwanda genocide and in Darfur in Sudan).

When the UN imposes sanctions, it asks the nations of the world to prevent a specific country from participating in international activities. This is usually done because of the country's record of human rights violations or abuse of power. Sanctions can include isolation from participation in the international economy, diplomatic matters, and sports and cultural activities. Sanctions can also mean



In extreme cases  
the UN uses  
military intervention  
to maintain  
international peace.

the non-recognition of a country because of acts of abuse of power. For example, the 'independent homelands' in South Africa under apartheid were not recognised by the international community, nor is Somaliland in Somalia, even though it is a functioning 'independent' democratic state. Sanctions are an important method of putting pressure on the government to prevent the abuse of power.

As previously mentioned, in extreme cases the international community, usually through the United Nations, uses military intervention or 'peace-keeping forces' to achieve international peace and to prevent the abuse of power.

### 3.4.2 REGIONAL MECHANISMS

The African Union (AU) is a regional structure that was established for states in Africa. Members of the AU have also signed and ratified the African Charter on Human and Peoples' Rights. One of the AU's functions is to promote democratic principles and institutions, popular participation and good governance. The AU has created a rapid response force to respond to the ongoing challenges of peace and security that undermine democratically elected governments in Africa. For example, the AU Peace and Security Council took a decision in 2015 to deploy 5 000 troops and police to Burundi to save lives and restore peace.

### 3.4.3 NON-GOVERNMENTAL ORGANISATIONS

The international community has established non-governmental organisations (NGOs) such as Amnesty International, the World Health Organisation, Human Rights Watch, Greenpeace, Article 19 and others.

**Amnesty International** informs people about international human rights violations. It creates pressure on governments by reporting human rights violations. Amnesty International produces an annual international report on human rights violations and information on the international community's human rights record.

The **World Health Organisation** (WHO) provides medical assistance, reports on human rights violations and reports on health conditions in different countries. It is recognised by the international community as neutral, and is given access to many countries, even where wars are being fought.



**Human Rights Watch** focuses on regional human rights, publicises violations and encourages international protests against offending governments.

**Greenpeace** makes the international community aware of environmental abuses. It lobbies internationally against experiments that use animals and against the dumping of toxic waste. Greenpeace acts as an advocate for environmental concerns around the world.

**Article 19** is a human rights organisation that promotes freedom of expression and lobbies internationally against censorship. It works for the free flow of information internationally, and promotes the use of the media to check the abuse of power by governments.

Many local and national NGOs also play a major role in checking abuse of power around the world. Very often NGOs produce 'shadow reports' to United Nations bodies such as the Human Rights Committee. By submitting a shadow report to a UN treaty body committee, NGOs can highlight issues not raised by their governments or point out where the government may be misleading the committee as to the real situation. Shadow reports may be presented to all the human rights treaty monitoring bodies.

*Greenpeace lobbies internationally as an advocate for environmental concerns around the world.*

## EXERCISE 12

### Should the international community intervene?

Read these cases and decide in each situation whether the international community should intervene, and if so, how.

1. The President is a dictator. The citizens are unhappy with his rule. They want a democratic government. They revolt against the President. He promises them a free and fair election. However, each time an election is held the President cancels the election results on the grounds of corruption. On the third occasion, civil war nearly breaks out. Human rights violations occur frequently. The citizens request that the international community intervene.
2. The Mindos and the Majos are the two main religious groups in Minland. Members of the ruling party follow the Majo religion and have begun a programme of 'ethnic cleansing' to exterminate the Mindos. They poison water reservoirs that supply water to the Mindos, deny the Mindos basic health services, and Mindo community leaders disappear daily. The international media has reported on these events.
3. Goudland is ruled by a minority government. Human rights and freedoms are denied to the voteless majority. The ruling minority enjoys all privileges and rights. Opponents of the government are imprisoned, banished or exiled. Goudland is a rich country but still relies on international markets and foreign investment.



4. An international consortium of mining companies requests that the foreign minister grant mining concessions in Luciana Bay. They bribe him to grant their request. He promises the dwellers of Luciana Bay that he will compensate and resettle them. The Luciana Bay dwellers are committed to preserving their environment and do not want to move. Despite opposition from the dwellers and other environmental groups, the government grants the mining concession.
5. Napanema is a country which borders Mapano. Both Napanema and Mapano are rich in natural resources. Many Napanemans now live in Mapano. The government of Napanema orders its troops to march into and annex Mapano. The people of Mapano are horrified. The President of Mapano is forced to flee his country and appeals to the international community for help.

**EXERCISE 13****How can the abuse of power be checked?**

Read the following scenarios. Use the list below to decide which method should be used to check the abuse of power:

- (a) the separation of powers
  - (b) the bill of rights
  - (c) the rule of law
  - (d) multi-party democracy
  - (e) publicity and the media
  - (f) the ombudsperson or the public protector
  - (g) A special commission of inquiry
  - (h) the international community
  - (i) fair procedures
  - (j) judicial review
1. Environmental rights are protected by law in your country. Your local town authority grants permission to companies to dump toxic waste on the outskirts of town where a number of squatters are living.
  2. A judge is charged with drunken driving. The Director of Public Prosecutions refuses to prosecute the judge.
  3. The Governor of the Reserve Bank steals government money and sends it to a Swiss bank.
  4. Public officials accept bribes before granting tenders to private companies.
  5. Many communities in your country are angry about the sentences that are given to a particular race group. They contend that the judges are racially biased.
  6. A stable democratic government is suddenly overthrown by a group of international terrorists.
  7. A paper manufacturing company buys an indigenous forest and plans to cut it down to manufacture expensive paper. The local communities are opposed to this.
  8. Hospital workers go on strike. In response, the government cuts subsidies to all hospitals.
  9. People with disabilities in your country cannot move freely in your town because there are no special facilities for them. For example, they cannot use the lifts in buildings because the operating buttons are too high up and out of their reach.



**EXERCISE 14****Should information about a drug investigation be disclosed?**

Your country's Intelligence Bureau (IB), with the help of Interpol, breaks up an international drug-trafficking operation. Several major arrests are made.

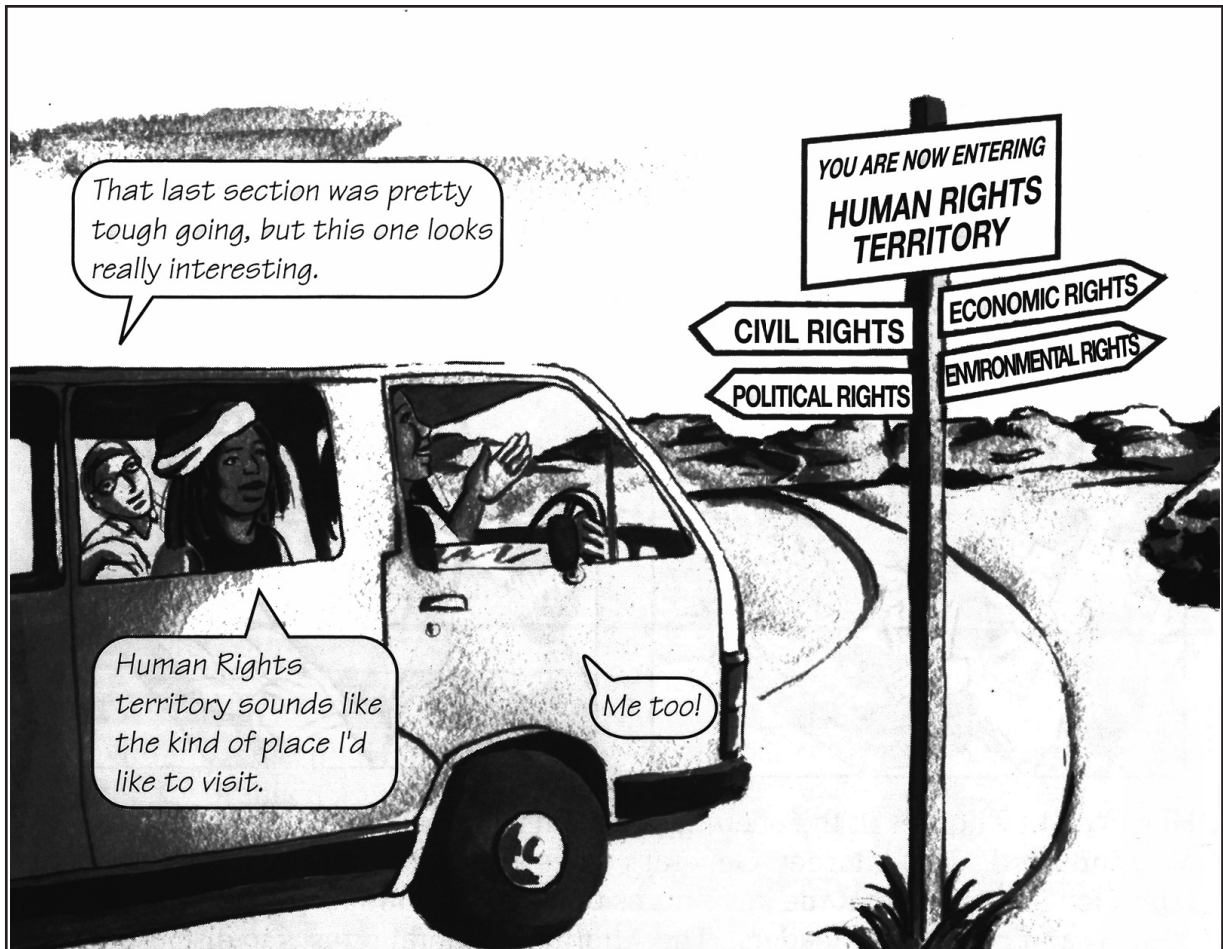


Key figures in the operation are still at large. Further investigations are conducted. The office of the Director of Public Prosecutions is interviewed by newspapers and television stations and states that the key figures under investigation are government officials and community leaders. The Director of Public Prosecutions refuses to disclose names. Newspapers and citizens criticise her decision not to disclose the identity of the people involved. The citizens believe that public figures are accountable to them and that they have a right to know who is involved. The Director of Public Prosecutions says that the matter has yet to go to court and the information cannot be released. She further states that releasing information will interfere with investigations.



Role-play a press conference interview between members of the media and the Director of Public Prosecutions about the issue. In your discussion, consider whether there is an abuse of power. If so, how can the abuse be checked?

## 4. HUMAN RIGHTS AND DEMOCRACY



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### OBJECTIVES

After reading this chapter you should be able to—

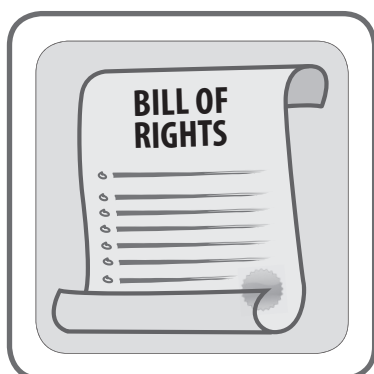
1. describe what is meant by human rights;
2. define the different types of human rights;
3. decide which human rights should be included in a bill of rights;
4. explain that a bill of rights may operate vertically or horizontally;
5. explain how human rights make democracy succeed;
6. describe the importance of freedom of expression, freedom of association, freedom of assembly and the right to equality in a democracy;
7. explain when it may be necessary to limit certain rights in a democracy;
8. describe how human rights may conflict in a democracy;
9. explain when it is justified to suspend human rights in a democracy.

**EXERCISE 1****Defining human rights**

Write in your own words what 'human rights' means to you. Try to write this in one sentence. Do not give examples of the different types of human rights.

**4.1 WHAT ARE HUMAN RIGHTS?****WHERE YOU LIVE**

DOES YOUR  
COUNTRY HAVE A  
BILL OR RIGHTS?



A government may not introduce laws that conflict with the bill of rights.

Human rights are one of the signposts to democracy (see Chapter 1) recognised and protected by society, and no government has the right to abolish them. Human rights have been defined as 'generally accepted principles of fairness and justice' or 'universal moral rights that belong equally to all people simply because they are human beings'.

Human rights may be protected through a bill of rights in a constitution or by other laws in the country. A bill of rights sets out things that are guaranteed in the constitution and cannot be changed by law without certain fixed procedures being followed. At the same time, a government may not introduce laws that conflict with the bill of rights. In most democracies these laws would be declared invalid under the court's power of judicial review (see Chapter 2).

Generally people are entitled to exercise their human rights. Sometimes, however, human rights can be restricted if they interfere with the rights of other people (see Chapter 3). In the words of Oliver Wendell Holmes, a famous American judge: 'The right to swing my fist ends where another person's nose begins.'



For additional resources from Civics Academy see: *What are Human Rights?*  
<http://www.civicsacademy.co.za/video/human-rights>



'The right to swing my fist ends where another person's nose begins.'



## 4.2 DIFFERENT TYPES OF HUMAN RIGHTS



*Civil rights provide citizens with liberty, equality and freedom to choose. Political rights enable citizens to participate in the political life of the community.*

Human rights can be divided into three different types:

1. civil and political rights;
2. social, economic and cultural rights;
3. environmental and developmental rights.

These rights are sometimes called first-, second- and third-generation rights. There is, however, no magic in calling them by these names and they sometimes overlap with one another.

### 4.2.1 CIVIL AND POLITICAL RIGHTS

Civil rights are rights citizens have to liberty and equality (eg to have the freedom to think and to have access to information; freedom to act and choose what to do, etc). Political rights are the rights citizens have to participate in the political life of their community and society (eg by voting for their government).

Civil rights often include the right (a) to liberty; (b) to equality; (c) to practise religion or not, as you choose; (d) not to be assaulted or tortured; (e) not to be detained without trial; (f) not to be killed; and (g) to receive a fair trial.

Political rights include the right (a) to vote; (b) to say what you believe; (c) to have access to information; (d) to attend meetings and gatherings freely; and (e) to join political parties, trade unions or other organisations.

### 4.2.2 SOCIAL, ECONOMIC AND CULTURAL RIGHTS

These rights give people the opportunity to participate in the social, economic and cultural life of the community. They concern the way people live and work together, the basic necessities of life such as food, shelter and health care, and people's cultural practices. Governments, and, in certain circumstances, private individuals and bodies, can be held accountable if they do not respect, protect, promote and fulfil these rights. This means that government must (a) not do things that make it more difficult for people to gain access to these rights; (b) protect people against violations of their rights; and (c) assist people to meet their basic needs.





Freedom from discrimination.



Marriage and family.



Right to privacy.



Education and recreation.



Right to work.



Housing and adequate living.



Healthcare pensions.

Some people argue that the following are examples of social rights: (a) freedom from discrimination on the grounds of race, sex, sexual preference or religion; (b) the right to marry and have a family; (c) the right to privacy; (d) the right to recreation; (e) the right to education; and (f) the right to health care. Others might argue that (a) to (e) are also civil rights. In any event, human rights may overlap when attempts are made to categorise them.

Examples of economic rights are (a) the right to work; (b) the right to housing; (c) the right to an adequate standard of living; and (d) the right to a pension if you are old or disabled.

Examples of cultural rights are (a) the right to participate in a culture; (b) the right to have one's culture respected and protected, provided it doesn't undermine the rights of other people; and (c) the right to practise one's own religion.

#### 4.2.3 ENVIRONMENTAL AND DEVELOPMENTAL RIGHTS

Environmental rights recognise that people have the right to live in an environment that is clean and free from pollution and protected from destruction. Developmental rights include the right to economic advancement (eg the right of a group of people to advance themselves economically).

### 4.3 WHICH RIGHTS SHOULD BE IN A BILL OF RIGHTS?

#### EXERCISE 2

#### Choose your rights

Your country is electing a new democratic government for the first time. You have been asked to draft a bill of rights for the new constitution that will guarantee democracy in the country. When rights are included in a bill of rights, they are enforceable by law. Rights can also be used to limit the power of the government. For example, a provision in the bill of rights might state: 'The government may not execute people who commit crimes.'

Divide into groups of not more than five and list six rights that you would include in the bill of rights to ensure that your country is democratic.

Most people agree that civil and political rights, such as freedom of speech or the right to vote, should be included in a bill of rights to protect the liberty of citizens in a democratic country. However,

there are conflicting views about whether social and economic rights, such as the right to adequate shelter, should be included in a bill of rights. Some people argue that if social and economic rights are included in a bill of rights, but cannot be made available to the people, the government and the bill of rights will become discredited. Others argue that citizens cannot enjoy civil and political rights if they do not have access to the basic necessities of life that are included in social and economic rights.

In the past, Western democracies have included civil and political rights in their bill of rights, while dictatorships in Eastern European countries and the former Soviet Union included social and economic rights in theirs. People who are opposed to including social and economic rights in a bill of rights argue that these can be included as guidelines for the government and should form part of a political party's manifesto and not be fixed in the bill of rights. Sometimes these guidelines are called directives of state policy, as is the case of Namibia and India.

The African Charter on Human and Peoples' Rights states that 'Every individual shall have the right to enjoy the best attainable state of physical and mental health'. The words 'best attainable' are used because this will vary, depending upon how rich a particular country is, and what resources it has available for these services.

South Africa is one of the few countries that include socio-economic rights in its Bill of Rights and the courts have applied them to cases involving housing and HIV medication for children. The rights in the Bill of Rights are actionable in the courts; the Bill of Rights aims to protect a range of interests and is committed to the values of human dignity, equality and freedom.

Some people insist that social and economic, environmental and developmental rights should be included in a bill of rights. Others argue that it is difficult to enforce these rights because their enforcement depends on the funds available.

Western democracies have included civil and political rights in their bills of rights, while Eastern European dictatorships included social and economic rights

### EXERCISE 3

#### Should social and economic rights be included in a bill of rights?

A country that was until recently ruled by a dictatorship is drafting a bill of rights to be included in its new constitution. For many years its citizens were deprived of proper schooling, housing and health services. The Reform Party argues that it is essential for the government to be compelled by a bill of rights to provide these. The Status Party argues that these rights should not be included in a bill of rights because the government may not be able to deliver them and this will discredit the constitution.

1. Role-play the leader of the Reform Party during a village meeting in which the leader explains why social and economic rights should be included in a bill of rights.
2. Role-play the leader of the Status Party during a village meeting in which the leader explains why social and economic rights should not be included in a bill of rights.



3. What do you think? Should social and economic rights be included in a bill of rights? Why or why not?



Unless environmental rights are protected in a bill of rights, they will be overlooked when they come into conflict with other rights.

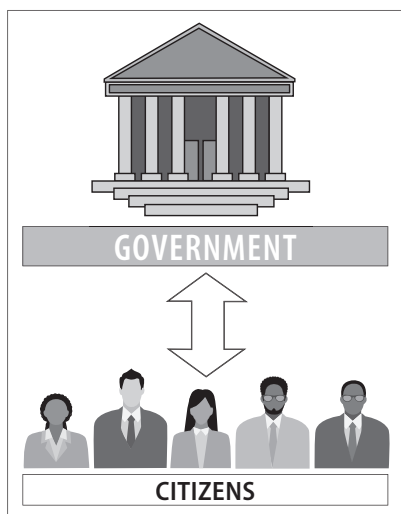
Environmental rights often clash with economic developmental issues. For example, paper companies may want to cut down trees in an area where environmentalists believe trees must be protected. Unless environmental rights are protected in a bill of rights, they will be overlooked when they come into conflict with other rights. Some suggest that these rights should be listed as goals of the constitution instead of rights, and then serve as a point of reference for future legislative action, ie as directives of state policy (see above).

The right to development is also very controversial. This might result in a particular group, which has been discriminated against in the past, being listed in the constitution to receive special assistance from the government regarding education, jobs or land. It also has been advocated by countries which, for various reasons, including colonial exploitation, believe that wealthier Western nations should be helping them to develop. Those who are opposed to this say that it creates a culture of dependency. They argue that people should develop using their own initiative and hard work and not become dependent on the government or international aid.

*Environmental rights often clash with economic development issues.*



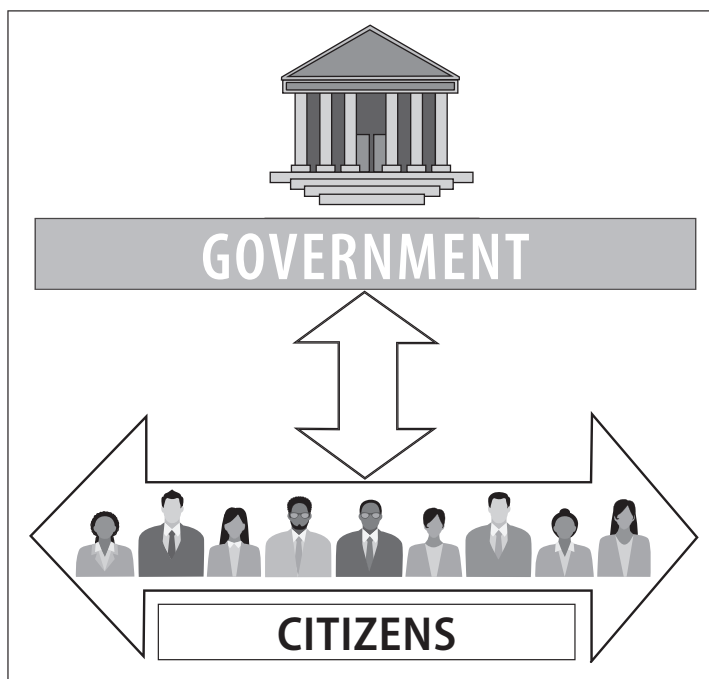
4.3.1 SHOULD A BILL OF RIGHTS OPERATE 'VERTICALLY' OR 'HORIZONTALLY'?



A vertical bill of rights protects citizens from things done by the government that undermine their human rights.


A bill of rights will not solve all problems in society. The amount of protection citizens will have will depend on whether the bill of rights operates 'vertically' or 'horizontally'. A vertical bill of rights protects citizens from things done by the government that might undermine their human rights. This means that citizens will only be protected if the government has been involved in the act that affects their rights. An example is when the government discriminates against people from a particular racial or ethnic group who wish to be employed in government departments or attend government schools. People in favour of a vertical bill of rights say that the government should not interfere too much in the lives of private citizens.

If the bill of rights operates horizontally, the rights of private citizens will be protected against violations by fellow citizens. For example, under a horizontal bill of rights private employers will not be able to discriminate against employees because of their race, and private schools will not be able to discriminate against children wishing to attend them. People in favour of a horizontal bill of rights say that it prevents unreasonable private discrimination.



A horizontal bill of rights protects citizens from violations of their human rights by fellow citizens.





Some bills of rights work both vertically and horizontally.

Sometimes, even if the bill of rights operates vertically, the government may introduce additional separate laws to prevent unreasonable discrimination. It is possible for a bill of rights to work both vertically and horizontally, as in the case of South Africa, where the 1996 Bill of Rights recognised that private abuse of human rights may be as harmful as violations by the state, and introduced a law to prohibit unfair discrimination. The South African Bill of Rights directly protects individuals against abuse of their rights by other individuals by providing for the direct horizontal application of the Bill of Rights.

#### EXERCISE 4

#### Should a bill of rights operate vertically or horizontally?

1. How does a vertical bill of rights operate? How does a horizontal bill of rights operate?
2. What are the arguments in favour of a vertical bill of rights? What are the arguments against a vertical bill of rights?
3. What are the arguments in favour of a horizontal bill of rights? What are the arguments against a horizontal bill of rights?

#### EXERCISE 5

#### Should these actions be allowed?

Should the law allow the following actions? Give reasons for your decision. Identify whether the action is vertical or horizontal.

1. When providing funding for schools, a new government gives more money to schools attended by the majority from a previously disadvantaged group in the country. In the past the minority previously advantaged group controlled the government and discriminated against the majority by providing more funds to minority group schools.
2. A person only invites people of her own race group to her birthday party.
3. A private church school, which receives no funding from the government, only allows children from its religious group to attend.
4. The government office in a region where the majority of the people speak one language employs people from that language group only.
5. A privately funded boys' youth club does not allow girls to join as members or visit its premises.
6. A private employer who belongs to a minority nationality group in the country employs only people from that nationality.
7. A brother does not allow his sister's boyfriend, who belongs to a different religion, to come to their home.



8. A restaurant owned by people of one racial group only allows people from that racial group to have meals there.



#### 4.4 HOW HUMAN RIGHTS MAKE DEMOCRACY SUCCEED

Human rights are necessary for democracy, but are all human rights necessary for democracy? Are some human rights more important than others for democracy to succeed?

### EXERCISE 6

#### Which rights help democracy succeed?

Divide into groups of not more than five and list five rights which you think will help democracy succeed.

If human rights that support democracy are undermined, democracy itself is undermined.

If human rights that support democracy are undermined, democracy itself is undermined. For example, if the government suppresses freedom of expression, this may prevent people from making good choices regarding their government. If the government prevents freedom of association, this may prevent people from organising to oppose it. If the government bans public demonstrations, this prevents people from displaying their mass opposition to some government policy. If the government treats some people in similar situations differently from others, there will be no equality, which is an important principle of democracy. A democratic leader once said: 'The rights of every person are diminished when the rights of one person are threatened.'

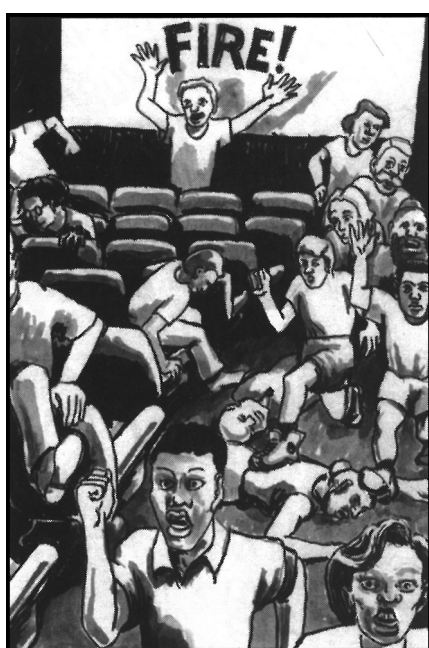


*The most important right in a democracy is the right of citizen participation.*

The most important right in a democracy is the right of citizen participation (see Chapter 6). For our purposes we will consider four basic rights which most people agree are essential in a democratic country. These are:

1. Freedom of expression.
2. Freedom of association.
3. Freedom of assembly.
4. The right to equality.

#### 4.4.1 FREEDOM OF EXPRESSION



*Should a person be allowed to falsely shout "FIRE" in a crowded theatre?*


Expression takes the form of writing, speech or use of symbols. Freedom of expression means the right to communicate as well as the right to receive information and ideas. It takes many forms and does not just consist of words. Thus, wearing a peace symbol, waving a flag or wearing an armband, button, T-shirt, red overalls and aprons are all forms of symbolic expression.

Freedom of expression is necessary for democracy. It should rarely be limited. However, there is a disagreement about what kind of expression should be protected, and what expression the government should be allowed to limit. If freedom of expression is unlimited, it may result in interference with the rights of others. For example, if somebody in a crowded cinema or theatre falsely shouts 'Fire!' in most countries, even though there is freedom of speech, that person would be arrested. Here a court would weigh up the individual's right to freedom of speech against the danger to the public by causing a panic-stricken stampede. In this case the court would probably find that the need to protect the public was more important than the individual's right to freedom of speech.

### EXERCISE 7

#### Should the expression be allowed?

Examine each of the following cases and decide—

- (a) what kind of expression was used, and
  - (b) whether it should be allowed.
1. A political opponent burns the flag of another political party at a public rally.
  2. An opposition leader burns a photograph of the President at a rally against corruption.
  3. A political leader at a public rally urges her supporters to go and fetch their weapons to kill members of a rival party, and they do so.
  4. A political leader at a public rally says that people of one race group are inferior and that his people are racially superior and should have the right to govern themselves. 



5. A newspaper publishes an editorial saying that the government is corrupt and that people should not pay their taxes.
6. A DVD shows scenes of people having sex with each other.
7. A traditional leader at a rally of his subjects tells them that foreign migrants are 'like lice on one's head that should be removed' and should 'take their belongings with them and go where they belong'. His followers engage in xenophobic attacks on foreign shop-owners by beating them up and looting their shops.



*Is too much freedom of expression a danger to society?*

Free expression often causes a clash of political, religious or personal values or beliefs.

Many people believe that freedom of expression is at the heart of democracy, and that people should be allowed to express views, no matter how unpopular they are. They say that all ideas should be put out for discussion, and that the best ones will be accepted by the people. Others say that too much freedom of expression is dangerous. They believe that speech should be controlled when it amounts to hate speech or causes violence by inciting riots, calling on people to revolt, is racist, bigoted, xenophobic, or otherwise undermines democracy. Conflicts involving freedom of expression are often the most difficult for the courts to solve. Free expression often causes a clash of basic values. People's political, religious and personal beliefs may conflict with the views held by others. They may also clash with the views and needs of the state.



In a democratic country, an important way people express their views is through newspapers or other media such as radio, television, magazines, books, videos, films and the social media (see Chapter 3). Social media platforms are very important for freedom of expression nationally and globally; for example, the #FeesMustFall campaign in South Africa started a social movement among university students calling for free university education.

#### 4.4.2 FREEDOM OF ASSOCIATION



*People should have the right to belong to or not belong to any organisation.*

Freedom of association means that people should have the right to belong to organisations of their choice, and the right not to be forced to belong to or support other organisations. The organisation that a person wishes to belong to or support should have a legitimate or legal purpose. Thus the law will not protect a group of criminals who wish to associate together. Where freedom of association is recognised, the law will protect the rights of individuals to associate, especially against interference from the state. The right to freedom of association means the right to have others, with whom you have a common interest, associate with you to achieve a legitimate goal. An example would be where citizens in an area that does not have electricity as a result of constant load-shedding, join together in an attempt to get electricity restored to their area.

The right to association sometimes includes the right not to associate with people with whom you do not wish to associate. Thus people cannot be forced to join a political party or a trade union. They may also decide whom they wish to exclude from their private association. However, in a democracy people usually may not be discriminated against unfairly on the grounds of race, religion, sex, etc.

### EXERCISE 8

#### Was freedom of association violated?

Examine each of the following cases and decide (a) whether freedom of association was violated, and (b) whether the violation should be allowed.

1. A trade union has an agreement with the management of a factory that all workers must belong to the union. The union argues that this is because in the end all workers benefit from its activities. Workers cannot choose to belong to another union or refuse to belong to any union.
2. An important political leader is murdered. A countrywide stay-away is called for by his political organisation. People who are not members of his political organisation are prevented from going to work. They are threatened with violence if they do.



3. A group of people from one racial group forms a private club to promote their language and culture. They do not allow people who do not belong to their race to join the club.
4. A group of women forms a sports club for women only. Men are not allowed to join the club.
5. Even though the majority of students want their university to reopen and continue with the academic programme, a minority group of protesters who want university education to be free of charge prevents the majority from attending lectures or writing examinations.



#### 4.4.3 FREEDOM OF ASSEMBLY

Freedom of assembly means that people should have the right to assemble, demonstrate and meet peacefully without interference from others. Gatherings may take the form of meetings, political rallies, marches, picketing, petitions and mass demonstrations. Freedom of assembly is important for democracy because it allows people to gather peacefully.

Like other rights, freedom of association is not absolute. The government may make reasonable rules regarding the time, manner and place of gatherings, protests and demonstrations so that the rights of others are not violated. However, the government may not prohibit all protest; nor can the government usually regulate a protest based on what people plan to say. However, government rules may include a requirement for proper marshalling to prevent criminal elements from harming other people or undermining the cause of the demonstration. Governments may also restrict freedom of assembly where assemblies and demonstrations are a threat to security and order, in the interests of public security.

Some people say that if an assembly incites others to violence or to act in such a way as to threaten or deny people's rights, it should not be allowed. In other words, as long as the exercise of the freedom of assembly does not directly threaten or infringe the rights of others, it should be allowed.



*Should left-wing demonstrators be allowed to march through a right-wing suburb?*

## EXERCISE 9

### Should private security and the police have been called by the university to prevent demonstrations by students demanding free university education?

A group of students wish to demonstrate on a university campus in favour of free university education. The university authorities allow them to demonstrate provided their demonstration is peaceful. The demonstrating students are in a minority and feel (a) the other students should join them, and (b) that the university authorities are not listening to them. They force the lecturers and other students who wish to study out of lecture halls by using intimidation, fire extinguishers and pepper-spray. They then go on a rampage and overturn rubbish bins and burn some cars and buildings, including a library. The university obtains a court order to prevent further violent demonstrations. The order is ignored by the students, who continue to use violence to interrupt the academic programme. The university calls in a private security firm and the police to safeguard the buildings and students who wish to attend lectures. The university states that unless students demonstrate peacefully and do not intimidate other students or interfere with lectures, further demonstrations will be banned. The protesting students argue that such an approach undermines their constitutional right to demonstrate and that the damage to property was caused not by them but by criminals and people trying to discredit their demonstrations. Most democratic countries allow freedom of assembly in public places, but not on private property – even if those assembling wish to express political views.

1. Was the conduct of the demonstrating students in line with the Constitution? Why or why not?
2. Was the conduct of the university in line with the Constitution? Why or why not?

As long as the demonstration does not directly threaten or infringe the rights of others, it should be allowed.

Freedom of assembly is very important in the context of political intolerance, particularly in countries moving from dictatorship to democracy. If freedom of assembly is not allowed, it may be difficult for minorities or others who have been out of power to get the attention they need to become equal political players with others.

## EXERCISE 10

### Political tolerance: Should the march be allowed?

Organisers of a minority political party, the Lingo Party, which holds the view that only those who speak their language should be allowed to vote, wish to arrange a march through an area where the Majo people, who not speak their language, are in the majority. They desire to do this to exercise their right to freedom of assembly and free political activity. The leader of the Majo Party is very unhappy about the proposed march because there have been recent incidents of violence between the supporters of the two political parties. She and the party believe that the Lingo Party is arranging a march to insult the Majos.

1. Role-play a hearing before the city manager where the leaders of the Lingo and Majo Parties, assisted by attorneys, argue whether the manager should allow the march to take place. The manager should make a decision.
2. Do you agree with the manager's decisions? Give reasons for your answer.
3. If the supporters of the Majo Party, which controls the neighbourhood, wish to protest against the march, what strategies could they use?

In some countries freedom of assembly is also violated in that people are denied the right to use public facilities to hold rallies or meetings. Another tactic to prevent freedom of assembly used by rival parties is to book all the facilities so that the rival party is prevented from holding its rallies.

#### 4.4.4 RIGHT TO EQUALITY

What does equality mean? Does it mean equal results, equal treatment, equal opportunities or something else?

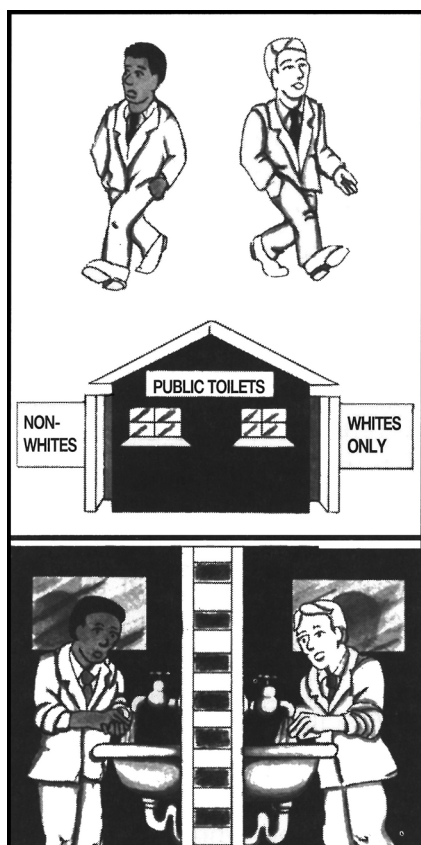
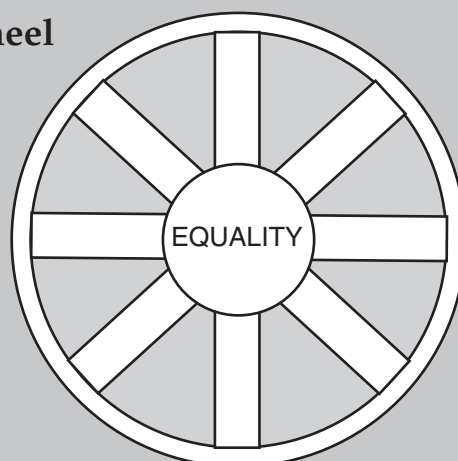


What does equality mean?



**EXERCISE 11****Drawing an equality wheel**

1. Draw an 'equality wheel' like the one on the right.
2. Brainstorm words that you associate with the word 'equality'. Write them on the spokes of your equality wheel.



*Separate facilities for different races imply that members of one of the races are inferior.*

Ideas concerning equality may change over different periods of history. For example, previously in South Africa the apartheid government's policy of having 'separate but equal' facilities for blacks and whites was accepted by the courts because there were no safeguards in a bill of rights preventing such conduct. In practice this was false, because far more resources were allocated to the white minority who also controlled the legislature, executive, judiciary and the economy. This 'separate but equal' doctrine was applied in the USA until it was discredited and the Civil Rights Act was passed. In South Africa the apartheid doctrine did not change until a new democratic Constitution was negotiated and implemented. Equality means that people should not be unfairly discriminated against on the grounds of race, national origin, sex, sexual orientation, age, disability, income or legitimacy. The challenge in countries where groups have previously been discriminated against is to make up for such discrimination without causing reverse discrimination against others. This is provided for in South Africa's Constitution, which allows for 'affirmative action' for previously disadvantaged communities in the country.

Sometimes it is reasonable to discriminate or not treat people equally. For example, a person must be a certain age to get married, drive a motor car or drink alcohol, and patients may be put in male and female wards in hospitals. In South Africa the decision by President Mandela to grant a remission of sentence to all mothers who were in prison at the time and who had children under the age of twelve years was challenged as discriminatory against other female prisoners. The Constitutional Court, however, found that President Mandela's decision was not unfair as it benefited minor children. However, discrimination which is not reasonable or is unfair (eg because someone just does not like a particular group of people) is not justified.

Equality means that people should have (a) equal opportunity; (b) equality before the law; (c) equal treatment in respect of housing, education, health and employment; (d) equal recognition of culture; (e) equal opportunity to develop; and (f) equal treatment regarding their worth as citizens.

## EXERCISE 12

### Was the discrimination reasonable or fair?

Discuss the following cases and decide whether the discrimination was reasonable or fair.

1. Homosexual men wish to enroll in the army to serve their country. The leaders of the military are opposed to homosexuals in the army because they think that it will undermine morale.
2. In some businesses, women are paid lower wages than men for doing the same work.
3. Some companies give female workers maternity leave, but no paternity leave is provided for male workers.
4. A manager of a construction company wants to hire the strongest men he can find to work for him.
5. An airline only employs people over a certain height so that they can reach the overhead storage spaces on the aircraft.
6. A Chinese restaurant only employs Chinese people to work there.
7. A man is denied employment because he has tested HIV positive.
8. HIV-positive married couples who wish to have artificial fertilisation in order to conceive children are refused treatment by public hospitals.



In countries such as South Africa and the USA, where people have in the past been discriminated against and treated unfairly, attempts have been made to bring about equality by using 'affirmative action'. Affirmative action is taking steps to favour certain people in society to make up for past discrimination against them by others. Examples of affirmative action are giving preference for jobs, school or university to people from groups that have been previously discriminated against.



Supporters of affirmative action programmes say that these programmes are necessary to overcome the effects of past discrimination, and that only strong action will bring about needed changes. The programmes make up for past discrimination which has made some people fall behind others in education or training. They also argue that the programmes provide role models and create hope for those who have not had either.

*Some people say that affirmative action leads to less qualified people being put into certain positions.*

People who oppose affirmative action say that it is another form of unreasonable discrimination. They argue that sex, colour, language or religion should not be used as a basis for classification. They say that if everybody gets equal opportunity, affirmative action is not needed. In addition they say that affirmative action leads to less qualified people being put in certain positions. They also argue that those admitted to university or given jobs because of affirmative action will always feel that they did not really deserve what they got.

In many countries non-citizens often experience discrimination and violence. In South Africa, incidents of xenophobia have increased in recent years. Xenophobia is the fear of what seems to be foreign or strange. Xenophobia in South Africa is aimed at foreign immigrants and refugees who are often seen as competing unfairly with South African shop-keepers in poor communities or taking jobs away from South Africans.

### EXERCISE 13

#### Does the university's policy bring about equality?

Examine the following situations and decide whether the policy brings about equality. Give reasons for your answers.

1. A previously segregated university states that it now will allow students who in the past had been discriminated against to have equal access on admission. Because the students have had inferior secondary school education, very few qualify for admission. If they are admitted, they will be treated the same as the other students. Does the university's practice bring about equality? Why or why not?
2. A previously segregated university changes its entrance requirements to allow more students from disadvantaged communities to be accepted. Those who are admitted are treated equally. Does this practice bring about equality? Why or why not?
3. A previously segregated university relaxes its entrance requirements and provides special tutorial support for educationally disadvantaged students who are admitted. Apart from that, all students are treated equally. Does this practice bring about equality? Why or why not?



#### 4.4.5 RIGHT TO PARTICIPATE IN POLITICAL LIFE OF A COUNTRY

Participation in society can take many forms and can be defined as taking part in the public life of a community or country. Although it is important to participate in the political life of the country, some people think that in fact it is not important to do so. However, when it comes to voting, some countries, such as Australia, make it compulsory to vote (see Chapter 2).

Political participation derives from (a) the freedom to speak out, assemble and associate; (b) the ability to take part in the conduct of public affairs; (c) the opportunity to register as a candidate, to campaign, to be elected and to hold office at all levels of government; and (d) the ability to vote in elections.

Under international standards, men and women have an equal right to participate fully in all aspects of the political process. In practice, however, it is often harder for women to exercise this right. In post-conflict countries there are frequently extra barriers to women's participation, and special care is required to ensure their rights are respected in this regard. In traditional societies operating in a democratic system it is often necessary to explain to voters that they may exercise their individual choice when it comes to voting, and that they do not have to follow any directions given by traditional leaders on whom they must vote for. Furthermore, they need to be reminded that their vote will be secret.


Government affects people's lives in many different ways. By participating in government people can have a voice in decisions made by the government. In every society someone has to make the decisions. If people choose not to participate, they will not have a say in those decisions. These decisions can include the following:

- (a) deciding how much people will have to pay in taxes;
- (b) deciding on name changes of cities, towns and streets;
- (c) deciding what the municipal boundaries should be;
- (d) deciding on how much should be spent on services and infrastructure in a country.

Depending on how the government is structured, decisions can be made at different levels, including national, provincial and local. Some decisions (eg about military power) are often made nationally; others (eg those affecting transport and roads) are more often made at provincial level; while others (eg sanitation and rubbish removal) are made at municipal level.



In some areas the provincial governments' powers work together with those of the national government, while in other areas the provincial governments alone have certain powers. The South African Constitution refers to 'co-operative government', in terms of which the various layers of government must co-ordinate their actions and legislation. The Constitution also lays down a series of rules for solving conflicts between national and provincial legislation.



The Constitution lays down rules to resolve conflicts between national and provincial legislation.

Participation in the political life of a country, however, has limits. Equal access for citizens to participate in important decisions about their lives is probably impossible to achieve in modern democracies. Although some government systems provide for extensive public participation (eg in electing public representatives and in participating in other political decisions that affect their lives directly or indirectly), not all citizens will be capable of having their voices heard equally; nor will all citizens have equal access to relevant information that will allow them to make informed political choices and to act on them. When citizens are unable to access relevant information it will be very difficult, if not impossible, to make informed decisions.

There are several reasons why equal access is probably unobtainable. These may be as follows:

- (a) The unequal distribution of private economic power almost always translates into the unequal distribution of access to political power.
- (b) Not all citizens are equally informed about or engaged in the political sphere. For example, in South Africa, where freedom of expression is constitutionally guaranteed, citizens do not have equal access to all ideas and facts that might be relevant in assisting them to make informed and free political choices. No citizen has access to all the mainstream and social media sources available in the country, nor to all the books, films and other forms of artistic expression.
- (c) Not all citizens choose to be members of political parties, even though political parties play a pivotal role in 'delivering' democratic government, which means that membership of a political party potentially provides citizens with an important platform to take part in decisions of that party and, hence, indirectly to have an influence on the direction of government.
- (d) People who are not members of a political party have no direct opportunity to have a say in the direction a political party takes, who its leaders might be, and whom it nominates to represent the party in the various legislative bodies.

- (e) Due to the proportional representation electoral system in place for national and provincial elections in South Africa, political parties in South Africa control which of their members will be appointed to the legislature and which of them can lose their seats in parliament because they have not 'toed the party line'.

Power is not only in the institutions usually associated with the functioning of a democracy – the legislature, executive, judiciary and political parties. Private institutions can often be very powerful and can make decisions that directly affect the lives of citizens, and can also 'capture' senior politicians and government officials.

See Chapter 6 for ways in which citizens can participate in democracy.

## 4.5 CONFLICTING HUMAN RIGHTS IN A DEMOCRACY

In a democracy human rights may be in conflict with one another because of conflicting interests. For example:

- (a) cultural rights might conflict with the right to equality;
- (b) the right to privacy might clash with the right to be informed;
- (c) developmental rights may clash with environmental rights;
- (d) the right to security may clash with the right liberty and due process of law.

Where rights conflict, the government or the courts must decide which right is more important.

In such cases the government, and very often the courts, must decide which right is more important. For instance, two girls whose father had died without a male heir were able to inherit from him even though the law of their culture stated that only males would inherit.

**EXERCISE 14****Conflicting rights**

*Should dune-mining be allowed in a nature reserve?*



Examine each case and identify which rights are in conflict. Decide which right is more important. Give reasons for your answers.

1. A bill of rights says that everyone has the right to live in an environment free from pollution and protected from destruction. It also says that everyone has the right to economic advancement and freedom of culture. The government wishes to mine dunes in a nature reserve next to a lake to provide minerals for the country, create jobs and improve the area. Local inhabitants of the reserve wish to retain the coastal dunes so that they can continue their traditional life of collecting medicinal plants in the dune forests.
2. A bill of rights says that everyone has the right to education and the right to freedom of language and culture. A minority group whose children attend a government school wish their children to be educated in their own language. The government says that it is too expensive to provide special classes for them, and they will have to attend classes with the majority language group.
3. A bill of rights says that everyone has the right to shelter and the right to legal representation. The government has limited funds and cannot afford both. The Minister of Justice needs the same amount of money as the Minister of Housing to provide legal representation to the thousands of unrepresented people who go to jail each year.
4. A bill of rights says that everyone is equal and has the right to education and to freedom of culture. A cultural tradition among one group in the country is that females are taken out of school by their parents and given to older men to marry them. Parents send their male children to school because they are future breadwinners and likely to get better jobs than the females, who should stay at home and raise families.
5. A bill of rights states that everyone has a right to education. University students organise a social movement that demands free education for all university students. The government says that it cannot provide free education for all university students and that those whose parents are earning more than a certain amount of money must pay for their children's university education. The government says that it has other priorities such as health care and housing that must be provided free to poor people.

**EXERCISE 15****Making choices at the chief's council meeting**

You are a member of the Chief's Council where the Chief has authority over the community of Kwafunda and Funamanzi. The Chief must decide how to spend money on social services in Kwafunda and Funamanzi.

- (a) Kwafunda has schools with few resources and has electricity and water taps. Its residents pay to upgrade its schools and want the Chief to approach the Department of Education to improve the schools by providing proper classrooms and toilets.
- (b) Funamanzi has also inherited schools with few resources, but has no electricity or water taps. Its residents want the Chief of Kwafunda to approach the local municipality to install electricity and water taps.
  1. Role-play the spokesperson for the Kwafunda Chief's Council trying to persuade the Chief to approach the Department of Education to allocate more money to upgrade its schools.
  2. Role-play the spokesperson of the Chief's Council of Funamanzi trying to persuade the Chief to approach the local municipality to allocate more money to install electricity and water taps.
  3. Role-play the Chief making the decision on what to say to the municipality and his or her reasons for doing so.

#### 4.6 IS IT EVER JUSTIFIED TO SUSPEND HUMAN RIGHTS IN A DEMOCRACY?

Some people believe that democratic governments should never be allowed to limit human rights. They argue that history shows that governments will use these powers even when they are not needed, and that human rights will be violated unnecessarily. Other people believe that in certain circumstances the government should have the right to limit human rights.



*History shows that governments will use their powers to limit human rights even when they don't have to.*

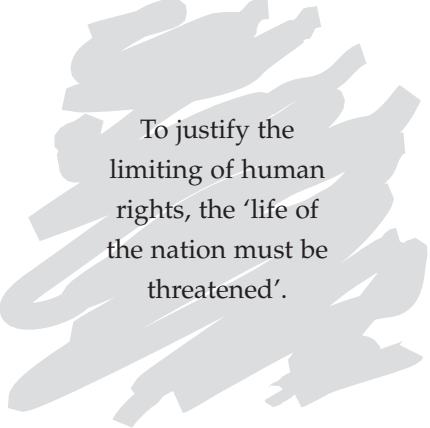


Most bills of rights include special provisions that allow governments to decide when there is a 'national emergency' or 'threat to national security'. They can take special measures to suspend some human rights to maintain law and order. Certain rights, however, can never be suspended. Usually the courts are given the power to make



sure that the government does not exceed its powers. In South Africa the Bill of Rights makes provision for states of emergency but even then certain rights may not be violated (see Chapter 3).

In a famous human rights case, the European Court of Human Rights decided that for a public emergency to allow the limiting of human rights during a state of emergency, the 'life of the nation must be threatened'. There must be facts to prove this, including that the public emergency was real or about to happen, that it was the whole nation that was threatened and that normal measures (eg police action) were not enough. For example, after the November 2015 series of co-ordinated terrorist attacks in Paris, killing 130 people and injuring over 360, the French government introduced several states of emergency. The Turkish government did the same after the attempted coup on 15 July 2016. The Turkish states of emergency have been criticised because over 100 000 people were removed from their positions, including police officers, judges, university teachers and other public officials, allegedly because they were supporters of an exiled Turkish cleric whom the government accused of masterminding the coup.



To justify the limiting of human rights, the 'life of the nation must be threatened'.

## EXERCISE 16

### Was the suspension of human rights justified?

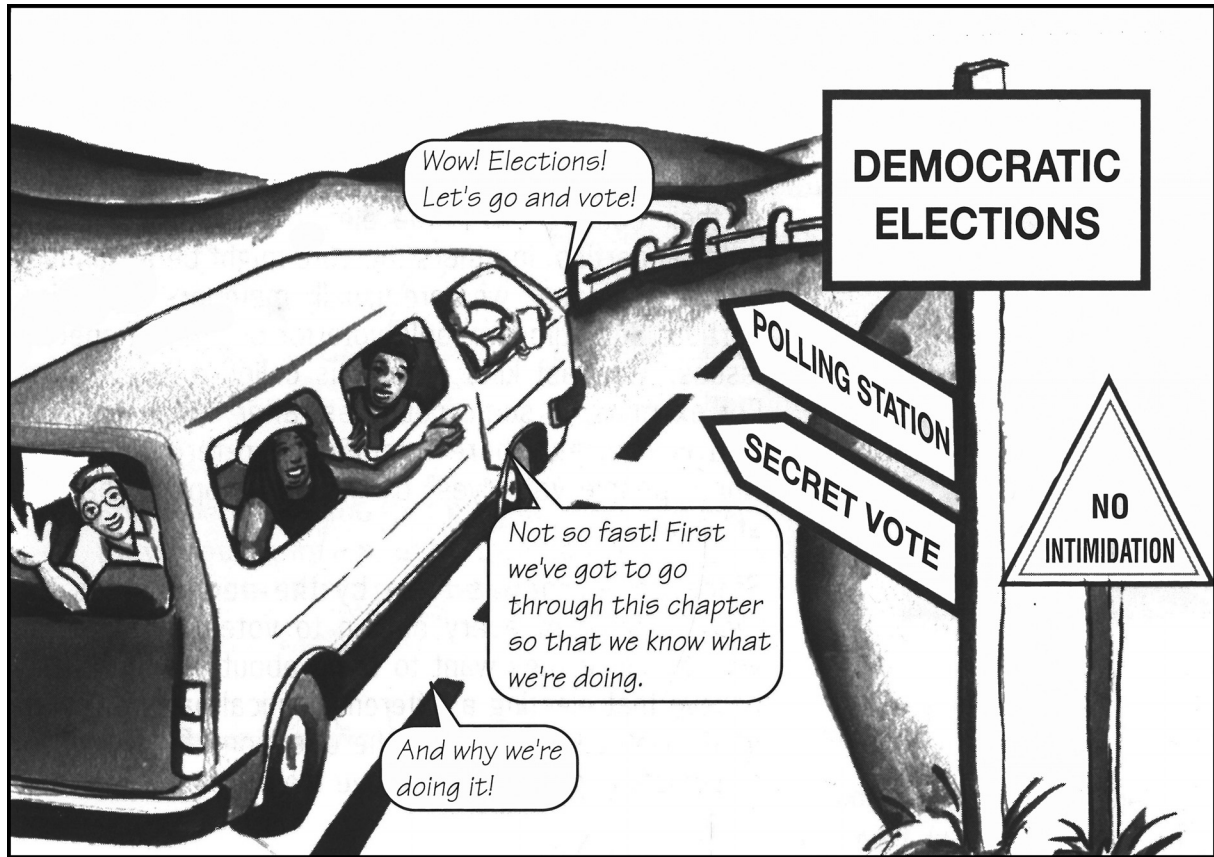
Examine the following facts and decide whether the suspension of human rights was justified. Give reasons for your answers.

1. One country is invaded by another. The home country suspends all civil liberties and imposes martial law with rule by military courts.
2. There is widespread unrest in the country and the government declares a state of emergency after more than 1 000 policemen are killed in a year. The state of emergency results in thousands of people being detained without trial.
3. Members of different political parties living in the same neighbourhoods attack each other and burn down one another's homes. A state of emergency is declared and a curfew is imposed so that people cannot move out of their houses at night without permission from the police.
4. Large-scale mass action and strikes take place and opposition political leaders call for the overthrow of the government. The government bans public meetings and marches.
5. A newspaper criticises the government and calls on the President to resign. The President suspends the newspaper's right to publish.



For additional resources from Civics Academy see: *What are Human Rights?* <http://www.civicsacademy.co.za/video/human-rights>

## 5. ELECTIONS



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### OBJECTIVES

After reading this chapter you should be able to explain—

1. why voting and elections are important in a democracy;
2. who can vote in a democracy;
3. the role of political parties in a democracy;
4. who should stand as candidates in a democratic election;
5. the importance of free and fair elections;
6. the importance of frequent elections;
7. how voting procedures work;
8. the importance of political tolerance during elections;
9. the importance of accepting defeat after democratic elections.

## 5.1 ELECTIONS AND VOTING

### WHERE YOU LIVE

DOES YOUR  
COUNTRY HAVE  
REGULAR FREE AND  
AND FAIR  
ELECTIONS?

A political election provides people with the opportunity to vote and decide what happens to the future of their country. In some elections, people vote for political parties; in others the vote might be for individual candidates, who are usually members of political parties. Sometimes people vote for or against specific issues. This last kind of vote is called a 'referendum', as was held in the United Kingdom in 2016, where the majority of people voted for the UK to leave the European Union. Another example would be where in some countries, after a new constitution is drafted, there might be a referendum vote where people vote 'yes' or 'no' on adopting the constitution.

Since democracy is 'rule by the people', it is the responsibility of every citizen to vote. People often vote because they want to bring about change. They believe that electing a different political party or candidate to office can change the direction of the government or society and improve their lives. In some countries, such as Australia, citizens are legally obliged to vote and can be prosecuted for not voting in elections.

### EXERCISE 1

#### Sharing your voting experience

1. Have you ever had an opportunity to vote for anything? If yes, what did you vote for? What method did you use for voting? Why did you vote the way you did?
2. What is the purpose of voting?

## 5.2 WHO CAN VOTE?



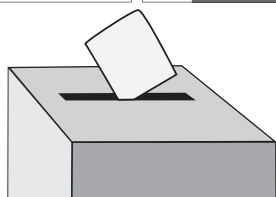
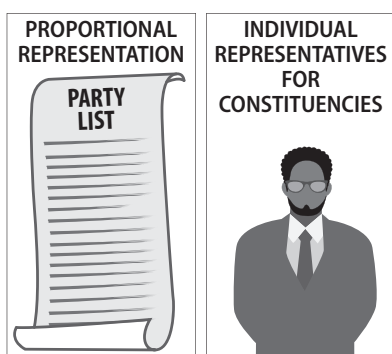
In a democracy all citizens who have attained a certain age have the right to vote. Various countries have different rules for voting. Most require voters to register or obtain some kind of voter identification card before the election. Some do not allow women to vote, all have legal requirements (usually a voting age of 18 or 21 years), and some require voters to be able to read and write. Some people criticise restrictions like these as undemocratic, saying 'rule by the people' should mean that as many people as possible should participate.



For additional resources from Civics Academy see: *What are free and fair elections?* <http://www.civicsacademy.co.za/video/free-and-fair-elections> *Why should I vote?* <http://www.civicsacademy.co.za/video/why-should-i-vote> *What are MPs?* <http://www.civicsacademy.co.za/video/what-are-mps>

**EXERCISE 2****Who should be allowed to vote?**

- Look at the list of people below and decide who should be allowed to vote and who should not. Give reasons for your answers.
  - South Africans living overseas
  - South Africans travelling overseas
  - convicted criminals over the age of 90
  - 16-year-olds
  - mentally disabled people
  - illiterate people
  - people over the age of 90
  - immigrants
- Some people argue that people should be required to vote and if they do not, they should pay a penalty, for example a fine. Do you agree or disagree with this proposal? Give your reasons.

**5.3 POLITICAL PARTIES IN AN ELECTION**

*Two types of elections: proportional representation and individual representation.*

In most democracies, political parties are the main organisations taking part in elections. As mentioned before, there are two main ways in which political organisations can participate in an election: on the basis of 'proportional representation' and 'individual' or 'constituency-based representation' (see para 1.5 in Chapter 1).

In the system of proportional representation people vote for a political party and each party puts up a list of candidates. Whatever percentage of the overall vote a party receives will decide the number of seats the party will have in parliament.

In the individual representation system, political parties select individual candidates to represent certain areas called 'constituencies'. To be elected, these candidates must receive the most votes in those areas.

There are also mixed systems of voting where voters may vote both for political parties and for individual candidates. This system operates at local government level in South Africa, where voters vote for a political party and a ward councillor to get seats at local level. A similar mixed system was recommended for the national and provincial legislatures when the election system was reviewed after the country's first democratic elections, but it was never implemented by the government.

Political parties usually present a set of principles or ideas which they hope to put into practice if they are elected. Therefore, it is important for voters to analyse what a political party stands for before voting



for a party or a candidate from that party. The results of the 2016 local government elections indicate that voters in South Africa have become more informed about the roles of political parties and their capacity for service delivery. The effect was that the ruling party lost control of four metropolitan municipalities to a coalition of parties or a combination of a coalition and support from an opposition party that does not want to enter into a coalition (see Chapter 2).

### EXERCISE 3

#### Proportional representation or individual representation – which is better?

Assume that a country has never had a democratic election before. Political parties have been formed but many voters do not understand much about how to vote. Many also live in rural areas where they do not receive much information about elections and others have never learnt to read and find it difficult to become informed. Political leaders must decide whether to allow people to vote for political parties or for individual candidates.

If the country has a system of proportional representation and citizens only vote for political parties, citizens could cast three different votes: one for a political party in the national parliament, one for a political party in the provincial legislature and one for a political party in the local council. An alternative is that citizens could just cast one vote for a political party and the percentage of people voting for that political party would determine the number of representatives that party would have in the national, provincial and local legislative bodies. The political parties would then determine who served in each legislature based on the list of party representatives they prepare.

1. What are the advantages for the country having a system of proportional representation?
2. What are the advantages of its having a system of individual representation?
3. Which system do you think is better for the country? Give reasons for your answer.
4. Assume that the country selected a system of proportional representation and will just vote for a political party. Should they cast three different votes – national, provincial and local – or only one nationally which will decide the make-up of the legislature at the national, provincial and local levels?



**EXERCISE 4****A speech by the People's Party**

Role-play a speaker making the following speech on behalf of the People's Party:

'Our party stands for socialism and justice for everyone. We believe that the government should be able to restrict what people do under certain circumstances. People should only be free to do things that are good for the development of the country. There should be no discrimination at all in society. All people should receive similar pay no matter what their job is. We must change from a government that favours the rich to one which represents all of us. National assets like the mines and banks should be nationalised in the interests of the people.'

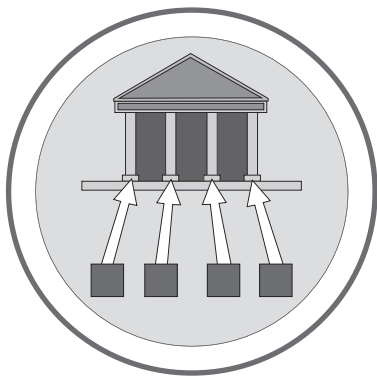
1. What are the main beliefs of this party?
2. Ask the speaker questions about the party's policy.
3. Do you agree with these beliefs? Why or why not?
4. If you were to form a new political party, list five statements of principle your party would stand for.

**5.4 MULTI-PARTY DEMOCRACY**

*Countries with only one political party often end up as dictatorships.*

It is commonly accepted that more than one party is needed for a democracy. This is called multi-party democracy.

If there is only one party, or if the same party always wins the elections, legitimate dissent and opposition will not be effective. Countries with only one political party often lead to dictatorships. If there is no opposition or a weak opposition to challenge the policies of the government, it is doubtful that positive change can take place in the country. As mentioned, the 2016 local government elections have resulted in coalitions or minority governments supported by other minority parties that face strong opposition from the present ruling party governing the country nationally and in eight of the nine provinces. Some people will argue that this is good for democracy at the local government level.



*In multi-party democracies, people of different ethnic and cultural groups learn to work together.*

On the other hand, when there are too many political parties, the country may split into many factions. Sometimes different racial and ethnic groups each form their own party and this leads to members of various racial and ethnic groups competing directly against each other in elections. To avoid this, some argue that political parties should not just be focused on one racial or ethnic group but should attempt to recruit people from different backgrounds. In this way people of different racial and ethnic groups and cultures will learn to live and work better together. Others argue that people of similar ideas and cultures will naturally form their own political parties and that this does not mean that they cannot still get along with others.

**EXERCISE 5****Some questions on multi-party democracy**

1. What is meant by multi-party democracy? Why is it important to have more than one party for an effective democracy?
2. Why is it important to have strong opposition to a governing party in a democracy?
3. Assume you want to start your own political party. What would be the reasons for and against having it mainly made up of people from your racial or ethnic group?
4. Why do you think that people of the same racial or ethnic group often join the same party? Should anything be done to change this practice? If so, what? If not, why not?
5. Do you think that if a country has many political parties, this will split the country and undermine democracy? Why or why not?

**5.5 CANDIDATES IN AN ELECTION**

In a democracy, individuals have the right to become candidates for public office. They are usually selected by their political party to run for office but they also often make a personal decision to stand for an election. Sometimes people can also stand for election independent of any political party. Becoming a candidate requires a sacrifice in time, energy and perhaps money. In a democracy, people must be willing to do this not because they want power or financial gain, but because they wish to improve their society. For a democracy to succeed, those elected to office must truly represent the interests of the people and be accountable to them.

*Candidates should not stand for public office because they want power or financial gain, but because they want to help improve their society.*





**EXERCISE 6**

**Describing your perfect political candidate**

Make a list of the qualities you would like to see in a candidate for public office. Divide into small groups and try to agree on ten qualities the group would like a candidate to have. Which are the most important and why? Each group should then present the qualities of their perfect candidate for office.





## EXERCISE 7

## The case of the screening law

Voting for public officials is an essential part of a democratic system of government. Many countries that have recently moved away from dictatorship and towards democracy, however, have encountered problems with the election process. For example, they have faced the issue of whether to allow former leaders of previous dictatorships to stand for election in the new government.

Assume that the new legislature of one such country, which had a dictatorship for 40 years, passes a law that 'bans from holding a senior office in government all those who held management or executive positions in the former dictatorship or were informants or otherwise assisted the secret police'. A list of 140 000 people who were informants with the old government is obtained from the files of the secret police.

1. Under the above-mentioned law, which of the following people might be banned from standing for election to the government? Do you think it is in the best interests of the country to impose these restrictions? Explain your answers.
  - (a) A doctor had applied to the dictatorship government to be director of the cancer research institute. She was hired on condition that she also taught first-aid courses to the secret police.
  - (b) Under the former dictatorship, a university professor was required to join the dictator's party to qualify for a teaching position.
  - (c) Because of his knowledge and experience, the head of housing under the dictatorship had been asked to take a senior position in the new government's housing department. In his previous job, he had given the better housing to officials of the dictator's party.
  - (d) A high-ranking police official in the dictatorship was known for generally being fair to its citizens. However, he did enforce some of the laws of the old government, including one banning demonstrations against the dictatorship. He was also active in the revolution that changed the government.
  - (e) A member of a political group that discussed politics and sometimes criticised the dictatorship was told by the former government to give the names of other members or lose her job. Because she had no other way to support her children, she supplied the names, which the government kept on file although it never acted against the people she listed.
2. What are the reasons for and against having such a screening law? If you were in the legislature of the new government, would you have supported or opposed the law? Give reasons for your answer.
3. Under the new law, should all the 'informers' on the list kept by the secret police of the former regime be banned from serving in the government? Why or why not?



## 5.6 FREE AND FAIR ELECTIONS



*Political campaigns enable citizens to make informed choices in an election.*

### 5.6.1 INDEPENDENT ELECTORAL BODIES

Independent electoral bodies are necessary to ensure that the elections are free and fair. As the names suggest, these bodies are funded by the government but operate independently from the government. Independent electoral bodies are responsible for—

- (a) compiling and maintaining the voters' roll;
- (b) counting, verifying and declaring the results of elections;
- (c) compiling and maintaining a register of political parties;
- (d) promoting voter education;
- (e) undertaking and promoting research into electoral matters;
- (f) developing and promoting the development of electoral expertise and technology in all spheres of government; and
- (g) continuously reviewing electoral laws and proposed electoral laws and making recommendations to government.

In a democracy, an independent electoral body is necessary to guarantee the credibility of the election process and to reduce the likelihood of the elections being rejected as unfair by the losing political parties and candidates. For example, in South Africa this body is called the Independent Electoral Commission, which is respected by all political parties.

### 5.6.2 POLITICAL CAMPAIGNS

There is a period before every election when the political parties and their candidates campaign and try to persuade people to vote for them. The most common campaign activities are political meetings or forums where candidates present their views and voters ask questions. Sometimes debates are held so that voters can compare different views. Views of candidates may also be heard through the media and social media. These include radio, television and newspapers, as well as social media platforms on the Internet such as Facebook, Twitter, blogs, etc. Signs, posters, T-shirts and buttons are other methods of getting the name or views of a party or candidate across to voters.

A campaign is not free or fair if candidates, parties or voters are intimidated.

It is through political campaigns that citizens have an opportunity to hear all points of view so that they can make informed choices in an election. Citizens should attend as many political rallies and meetings as are necessary for them to understand the policies of the different parties. However, they should not feel obliged to support a particular political party merely because they received a free T-shirt or meal at its rally. There is nothing dishonest or unethical in collecting T-shirts or free meals from a number of different political parties. The important thing is for citizens to learn to judge politicians by their track record and deeds rather than by the promises they make, and to vote accordingly. Citizens should remember that when they enter the polling booth their vote is their secret and cannot be identified by anyone.



*Individuals or companies who give money to help finance political campaigns, often expect favours in return.*

To have a free and fair election there must be a free and fair campaign, allowing for freedom of expression, freedom of assembly and freedom of association (see Chapter 4). A campaign is not free and fair if the candidates, parties or voters are intimidated. This means that people should not put unfair pressure on them, including threats of violence. All parties and candidates should be heard equally. If people in one area do not allow opposing parties or candidates to campaign, this results in only one point of view being heard, and is a violation of commonly accepted electoral codes of conduct. A democracy allows all points of view to be heard during a campaign.

Political campaigns are expensive. Posters, pamphlets and radio and television advertisements must be paid for. Political parties may not use state resources for propaganda purposes in communities or at rallies. Often, individuals and companies give money to help finance political campaigns. After the election, these individuals and companies sometimes expect the winners to do favours for them. To prevent this problem it has been suggested that the amount that any person or company is allowed to give to a political party's campaign should be limited, or that campaigns be paid for by government money. It has also been suggested that political parties should be required to disclose who their funders are, but this has proved controversial. Those in favour of disclosure of the identity of party funders argue that it will prevent 'state capture' of politicians and government officials. Those against disclosure argue that it will discourage people from funding political parties because donors wish their contributions, like their votes, to be secret.

## EXERCISE 8

### Should political parties be required to disclose who funds them?

1. What are the arguments in favour of political parties disclosing who funds them?
2. What are the arguments against political parties disclosing who funds them?
3. If you were a lawmaker, would you support a law that requires political parties to disclose who funds them? Why or why not?

The media plays a special role in political campaigns. Radio, television, newspapers and social media greatly influence voters. Some argue that all candidates and political parties should have equal access to the media. This could mean that television and radio news programmes should provide 'equal time' to each political party. It might also mean that all should have the same opportunity to buy time, or space in a newspaper, for the same price. In some countries state-funded TV stations only allow time on TV and radio programmes in proportion to the number of representatives the parties have in parliament. This undermines democracy as the smaller parties do not have equal time to explain their policies.

Campaigns in democracies should focus on the issues and policies the parties and candidates are proposing to introduce to address the problems of the society. Sometimes campaigns focus on the personalities and popularity of the candidates themselves. These campaigns emphasise criticisms of the other candidates rather than of what they stand for. As previously mentioned, during election campaigns citizens should judge candidates according to their track record – not according to their promises.



### 5.6.3 SAMPLE ELECTION CODE OF CONDUCT

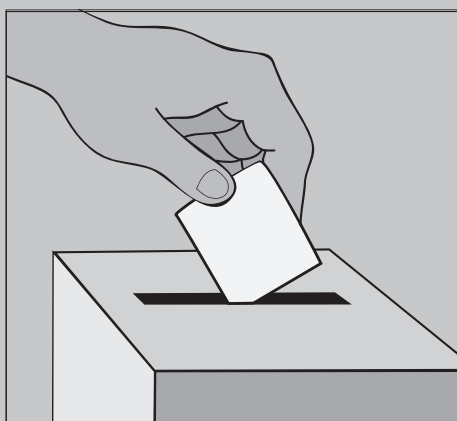
Sometimes political parties are required to commit to a code of conduct for elections.

An example of a code of conduct might look like this:

#### CODE OF CONDUCT FOR FREE AND FAIR ELECTIONS

1. All parties will have access to all voters. No party may control any area, or exclude any other party from any area.
2. There may be no use of inflammatory language.
3. There may be no use of intimidation in any form whatever, including death, arson and threats.
4. There may be no interference or disruption of public meetings.
5. All parties must commit themselves to a secret ballot, and respect voters' rights to keep their votes secret.
6. There will be a ban on the carrying and display of all weapons during election campaigns and voting.
7. The security forces may not take sides or interfere with the election process.
8. Election campaigns must be conducted fairly, and parties and voters must be tolerant of one another's points of view.
9. There may be no interference with voters or ballot papers on Election Day.
10. All political parties must undertake to accept the result of the elections if they are declared 'free and fair'.

*[For the South African Independent Electoral Commission's Code of Conduct see Annexure C.]*




**EXERCISE 9****Were the elections free and fair?**

Assume that the following incidents happen during a campaign. Discuss whether you think they go against the idea of a 'free and fair election'? Give reasons for your answers.

Should there be a law or election rule to stop or control the practices? If so, what should it say? If not, why not?

1. A traditional chief does not like the views of a political party. He tells people in his area not to attend any meetings involving any members of that party.
2. A television station mentions one candidate twice as often in their news broadcasts as any other candidate.
3. A candidate raises a large amount of money to support her campaign. She is able to buy over three times as much time on radio as any other candidate.
4. One party steals and destroys all the pamphlets and campaign literature of an opposition party.
5. Sophie is running for office against Themba. Themba gives a speech in which he says: 'Sophie is way out of her depth in standing for election. There are few women in politics in our country. This is because a woman's job is to have children and to look after them by staying at home and working in the kitchen. Women are also too emotional. If elected, Sophie will be like this. She will make a noise but get nothing done.'
6. A man tells his wife: 'I want you to vote for the Chauvinist Party, they will help us most. Vote that way or you will be in trouble.'
7. An employer says: 'This party is best for the company. I want you to vote for them or go and work somewhere else.'
8. In an election one candidate, Joel, never criticises the ideas of his opponent but constantly calls him: 'A bad person who has affairs with other women even though he is married.'

**5.7 FREQUENCY OF ELECTIONS**


Dictators often maintain power by deciding when to hold elections.

In a democracy, elections must not only be free and fair but they also must be held frequently. Dictators often maintain power by deciding when to hold elections. This can be done either by not holding elections on a regular basis or by postponing them indefinitely. Dictators may also only call for elections when they are fairly certain they or their parties are most likely to win. These practices may make it difficult, if not impossible, for opposition parties to gain power. Even in democratic countries political parties in power may sometimes decide to hold elections during times when they think they will win – which may be some time before they are legally obliged to hold the next elections.



*Should the President be allowed to call for elections whenever he or she desires?*

People have different ideas on how frequently elections should be held. Constitutions often include provisions for elections for the legislative and the executive branches to be held every two, four or six years. Others allow the President to call for elections when he or she desires. In a parliamentary system, a vote of no confidence in the present government by members of the legislature often results in new elections being called for. In democratic countries with Presidents, the terms of the President are usually limited (eg in the USA and South Africa the President is limited to two terms of office).

## EXERCISE 10

### How often should elections be held?

1. Do you think there should be a set time established by the constitution when elections should be held? Give your reasons.
2. If you were to establish a set time between elections, how long would it be? What are your reasons for selecting this time period and rejecting others?
3. Assume that the constitution of a country gives the President the power to decide when elections are to be held. The President believes the country is too unstable and that violence may result if elections are held any time in the near future. Should the President have the power to postpone the election, or should there be a provision in the constitution or a law requiring the President to hold an election within a certain number of years?

Give reasons for your answers.

## 5.8 VOTING PROCEDURES

The following are the main steps that take place during voting in a free and fair election (the exact steps required will depend on the electoral laws of the country):

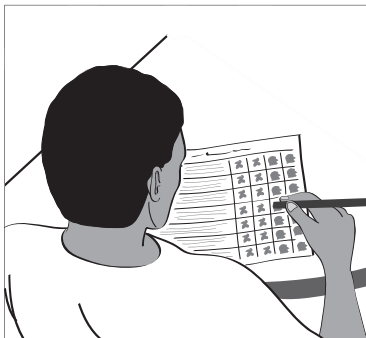
### 5.8.1 BEFORE THE ELECTION

**Registration:** This is the process of being identified as a voter. Some kind of identification document or card, or voter card, must be obtained before voting. The purpose is to make sure that no-one votes twice and that each voter is eligible to vote.

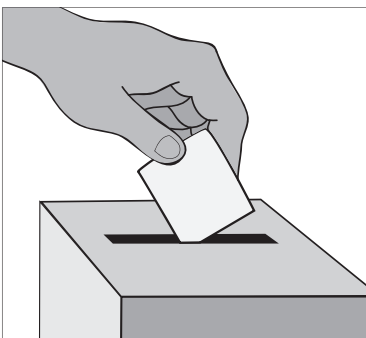
5.8.2 VOTING IN AN ELECTION



Either an ID book or a voter's card can be used for identification.



Voters place an X next to the party or person for whom they wish to vote.



**All votes are secret.**  
Voters place the folded ballot into the sealed ballot box.

1. Once they arrive at the polling station, voters present their identification document (eg in South Africa voters must present their identity book or smart card for identification purposes). Their names are checked and their thumb nail is marked with an indelible dye by an electoral official. This is to verify the names of the voters and to make sure that each person only votes once.
2. Voters are given the ballot paper on which they vote. They then go into the voting booth (the place where they make their mark on the ballot paper). Voters should carefully read the ballot paper and place a mark (usually an 'x') next to the party or person for whom they wish to vote.
3. All votes are secret in the voting booth and no one can see where the voters mark the ballot paper.
4. Voters place the folded ballot papers into the sealed ballot box without anyone seeing how they are marked.
5.
  - (a) When the time for voting is over, the voting station is officially closed.
  - (b) The ballot box is sealed in the presence of all the candidates or political party representatives, and then taken to a place where the ballots are to be counted.
  - (c) A designated official breaks the seal on the ballot box and opens the box in front of political party and neutral monitors. Some monitors are from political parties and others are neutral and do not belong to any party. Sometimes there are also international monitors, who also may be referred to as 'observers'.
  - (d) The people counting the votes set aside spoilt ballot papers which cannot be taken into account in the overall result of the election. This is done because they do not clearly indicate who the voter is voting for. For example, some people leave ballot papers blank or make too many marks.
6. Each ballot paper is examined and counted by a ballot clerk with the monitors watching and checking on the counting. The ballots are then put back into the ballot box and the box is sealed.

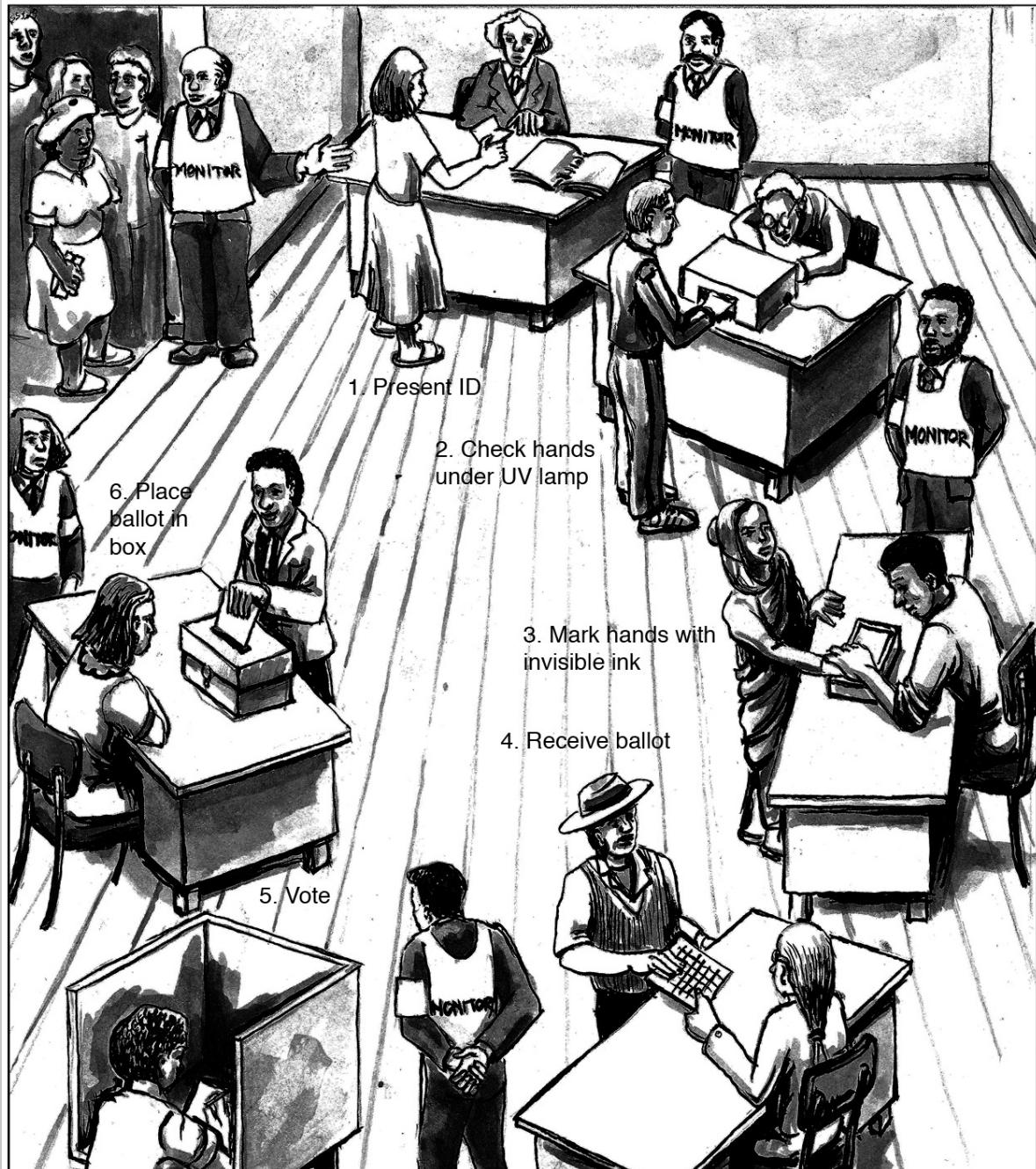


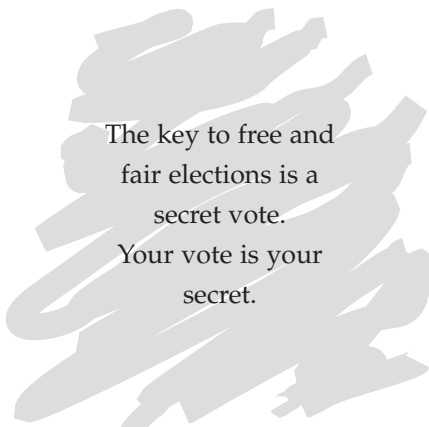
## EXERCISE 11

## At the voting station

Role-play the voting procedures in an election with people designated to be voters, election officials, monitors, etc. Follow the steps set out above.

Were the proper procedures followed? Give reasons for your answers.





The key to free and fair elections is a secret vote.  
Your vote is your secret.

As can be seen in the procedures above, election monitors are very important to ensure that the election is free and fair. Their job is to report any problem to election officials.

Sometimes, especially when there have been election problems in the past or a country is changing to a democracy, there are international monitors. These are people from other countries who observe elections and can draw attention to problems such as fraud, intimidation and violence. They can help put international pressure on governments to conduct fair elections or cancel unfair elections where there has been widespread abuse.

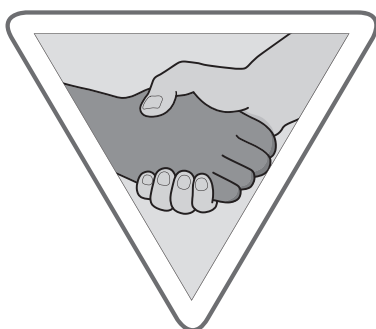
## EXERCISE 12

### What should international monitors do?

The President, a dictator in a country that has for a long time only had one party involved in politics, says that there will be an election and all parties will be allowed to participate. He invites international monitors to come and observe the election. A team of over one thousand monitors comes and many of them conclude that during the election, there was widespread intimidation of voters by people in the President's party and government. Monitors say that they saw members of the President's government threatening voters with physical harm if they did not vote for the President. The President says this is untrue. He believes that the monitors want him to lose the election. He says he would not have invited them if he was not going to conduct a free and fair election.

1. Why do you think the President invited the international monitors to his country?
2. What would you do if you were one of the international monitors?

## 5.9 POLITICAL TOLERANCE AND ELECTIONS



**F**or democratic elections to succeed, they must take place in an atmosphere where citizens are willing to tolerate and accept political views other than their own. Political tolerance means that people will be allowed to speak, campaign, assemble and associate with people and ideas others do not like. If people do not allow or tolerate legitimate political activity by others, the democratic ideal, which allows participation by all citizens, is violated. Political intolerance also often leads to violence, which makes it difficult, if not impossible, for democracy to work.

**EXERCISE 13****How politically tolerant are you?**

1. Think of a group in your society which you dislike. You need not name it. On a scale of 1 to 5 indicate how likely you would be to allow a member of the group (5 being 'very likely' and 1 being 'not likely at all'), to—
  - (a) conduct a march in your community;
  - (b) speak at a public meeting in your community;
  - (c) if you were a parent, be friends with your children;
  - (d) if you owned a newspaper, place advertisements putting forth their views;
  - (e) recruit members for their group at the place where you work;
  - (f) distribute pamphlets promoting their ideas in your community.
2. How did you score each one? Compare your scores with the scores of others.
3. Which of the above actions that you said you would take would you call examples of political intolerance? Which are not? Does your willingness or unwillingness to be politically tolerant surprise you?
4. What makes people politically intolerant? What methods might be used to bring about political tolerance in your society?
5. Is there a difference between being politically tolerant of someone and accepting their ideas as true? Explain.

Political tolerance often becomes an issue during election campaigns. Supporters of one political party sometimes attempt to restrict the political activities of other parties and candidates.



*Political tolerance often becomes an issue at election time.*



**EXERCISE 14****A political party is denied a hall for a meeting**

The organisers of the Open Political Party wish to hold a meeting in a community hall which is controlled by a local city council dominated by the Free Speech Party. The Free Speech Party has an overwhelming majority of representatives on the local council and does not want the Open Party to hold a meeting in the hall because the majority of the people in the neighbourhood are supporters of the Free Speech Party. They also say that violence will occur if the Open Party holds a meeting in the hall.

1. Role-play a discussion between the negotiators from the Open Party and the Free Speech Party about whether the Open Party should be allowed to use the hall.
2. If the Free Speech Party has won control of the local authority through a democratic election, should they not be able to control use of the hall? Give reasons for your answer.
3. If the Free Speech Party refuses use of the hall, what can the members of the Open Party do?



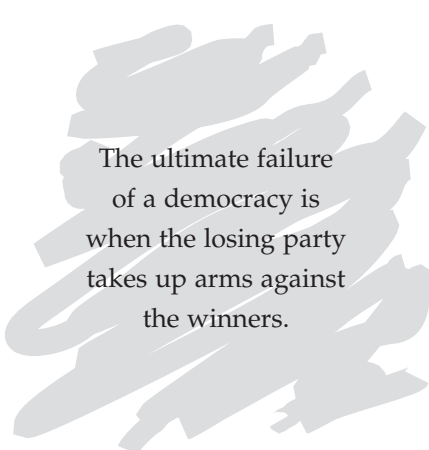
People must understand the benefits of living in a multi-ethnic, multi-cultural society.

Political tolerance is being able to accept and appreciate people of different racial and ethnic backgrounds, cultures, beliefs and customs. For this to happen, people must understand that there are benefits from living in a multi-ethnic and multi-cultural society.



**EXERCISE 15****What are the benefits of a multi-cultural society?**

Divide into small groups and list all the possible benefits of having more than one racial, ethnic and cultural group in a society.

**5.10 AFTER THE ELECTION: ACCEPTING DEFEAT**


The ultimate failure of a democracy is when the losing party takes up arms against the winners.

**A**n election is a competition, and therefore there must be winners and losers. If democracy is to succeed, political parties and their leaders must be willing to compete in an election and accept the results. After a free and fair election, those who have lost power as well as those who failed to gain it must be willing to accept defeat. This links up with the idea of political tolerance, because it means one is willing to be governed by those with whom one does not agree.

After a democratic election, the losers should become an opposition party. They play an important role by putting forth alternative ideas to those of the winners in the election. They should continue to speak out and work hard so that they will be elected next time. If they feel that the elections were not free and fair because of irregularities, they should go to court to challenge the results, and not resort to violence. The ultimate failure in a democracy is when an election happens and the losing party takes up arms against the winners.

After an election the winning party in government must respect and protect the rights of all citizens – including those who campaigned and voted against it. It is undemocratic during elections to threaten not to provide services to communities that do not support the winning party during campaigning and voting.

**EXERCISE 16****The President declares the election invalid**

The President of a country and her party have been in power for many years. They are seriously challenged by an opposition party that wages a tough election campaign. The President says that the opposition party has violated many election rules, including encouraging some people to vote more than once. The results indicate that the opposition party has won the election. Due to these charges against the opposition party, the President declares the election invalid and orders a new election within 60 days.

1. What reason did the President give for declaring the election invalid? Might there be another reason?
2. If election violations occurred, how should this issue be addressed?
3. Should the President make decisions about elections in which she and her party are involved as candidates? Why or why not?
4. If the country was a democracy, what kind of remedy could have been available to the President instead of her invalidating the elections?

## 6. CITIZEN PARTICIPATION



### CONTENTS OF CHAPTER

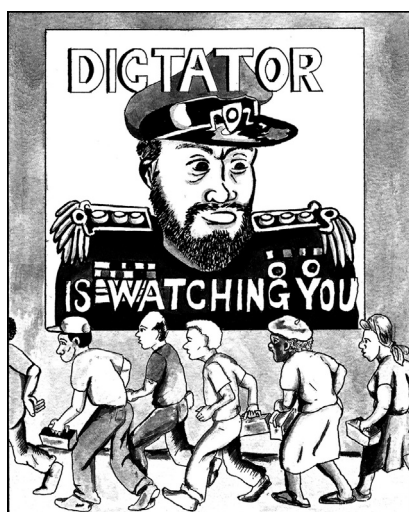
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### OBJECTIVES

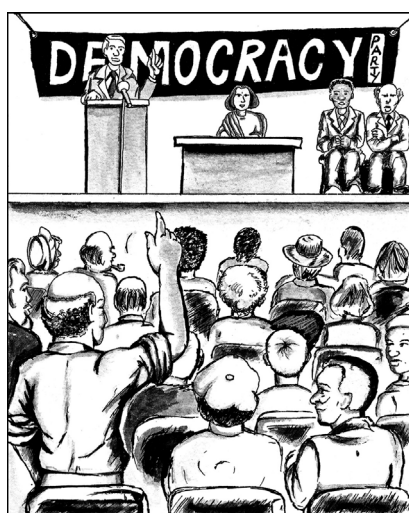
After reading this chapter you should be able to—

1. appreciate why citizen participation is important in a democracy;
2. describe how to become informed in a democracy;
3. list the different ways of participating in civil society;
4. explain how to participate in party politics during elections;
5. describe how citizens can change public policy;
6. explain how lobbying works;
7. appreciate why citizens owe responsibilities to one another.

## 6.1 WHAT IS CITIZEN PARTICIPATION?



*In dictatorships there are usually rulers and subjects.*



*In a democracy, citizens should work as partners with their government.*

A successful democracy relies on the actual, effective participation of the country's citizens in the decision-making processes. Participation in democracy is necessary for the development of a democratic culture. The role of the citizen in a democracy is very different from that role under other forms of government. In dictatorships and other non-democratic systems, there are usually rulers and subjects. In a democracy citizens elect their leaders. Citizens should work as partners with their government and participate in ways that promote human rights and the public good. If citizens fail to participate actively, there is a danger that they will become subjects rather than participants in the democratic process of governing. If citizens become subjects, the government makes all the decisions without input from its subjects. It is important to remember that elected officials are the servants of the people and the people are not their subjects.

New democracies must be able to move beyond organising elections and forming institutions and begin to successfully tackle issues related to security, jobs, human rights, physical well-being and human development. Democracy should facilitate economic growth and deliver the means for people to achieve a better life, while protecting fundamental rights and ensuring that citizens are free from oppression and arbitrary government intrusion.

The most obvious way that citizens in a democracy participate is through elections and voting. Elections give legitimate status and power to the elected leaders (see Chapter 5). Once this power has been delegated to leaders, the role of citizens is to make sure this power is not abused (see Chapter 3). In addition to elections, citizens must also tolerate the differences among the people of the country.

Non-participation by citizens is like telling leaders to do as they please. The price of a successful democracy is continuous vigilance by the people of the country, even when the people have become disappointed with the policies and practices of the government. Citizens should never give up the right to hold their government accountable. Non-participation often gives the government unchecked power, which is likely to result in a dictatorship or other authoritarian types of government (see Chapter 1).

When residents in a community experience problems, these problems must be addressed by the residents of that particular community. Working towards solving the community's problems will empower residents to be in control of their own destiny.

There are many advantages to citizen participation:

- (a) It ensures that the leaders do not abuse their powers.



- (b) It keeps the government more informed of the wishes of society.
- (c) It involves citizens in the governing of the country.
- (d) Input by citizens means that more informed and better decisions are made.
- (e) It influences and holds accountable the institutions that service the community.

## EXERCISE 1

### The search for the perfect citizen

Divide into groups of not more than five and make a list of all the different ways the perfect citizen in a democracy can participate. Look at each item on the list and decide whether every citizen in the community should or could have each characteristic.

Compare your list with the one below: which items are the same and which are different?

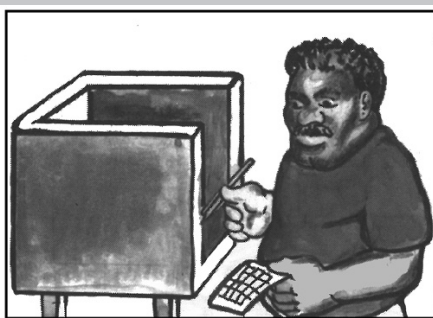
- (a) Become informed by learning about issues and leaders.
- (b) Educate others about issues and leaders.
- (c) Debate issues.
- (d) Work in the community in support of a particular cause or to protest government action.
- (e) Form or join political parties or other community or grassroots organisations.
- (f) Attend political party or community meetings.
- (g) Become a leader of a political party, labour organisation or community organisation.
- (h) Vote in elections.
- (i) Campaign for those standing for office.
- (j) Stand for office and serve if elected.
- (k) Pay taxes.
- (l) Serve in the military.
- (m) Use legal channels to challenge official action, such as meeting with senior government officials, taking cases to court etc.
- (n) Lobby public officials.
- (o) Protest by demonstrations, boycotts, strikes, etc.
- (p) Respect the rights of other citizens.
- (q) Be a productive member of society.
- (r) Become a member of the local neighbourhood watch.
- (s) Bring matters of concern to the attention of the Chapter 9 institutions that support democracy, such as the Public Protector, Human Rights Commission, Independent Electoral Commission (see Chapter 3).
- (t) Participate in community voluntary service activities on Mandela Day, 18 July, every year.



*Become informed*



*Debate issues*



*Participate in democracy*



*Be productive*



## 6.2 BECOMING INFORMED

## WHERE YOU LIVE

ARE YOU INFORMED  
ABOUT YOUR  
RIGHTS AND  
POLITICAL ISSUES?

Being informed is essential to effective citizen participation. Citizens need to know their legal rights. This enables them to know when their rights are being infringed and where to go to solve problems. They also need to be informed about issues. Being informed is a form of empowerment. Informed citizens make educated and rational decisions. This prevents citizens from being improperly manipulated and helps them separate gossip and rumour from fact.

Social media platforms make staying informed very easy. You might find that the daily news only provides superficial information on a matter. If you want to know more, find and read books that have been written on the topic. Chances are, you spend several hours each day scrolling through Facebook and Twitter. So why not make it more informative? Follow news organisations and personalities on Facebook and Twitter. On Facebook, you can also see the day's trending stories on the right side of your Newsfeed, while Twitter allows you to create lists with specific people for an easy summary of the day's headlines.



*Informed citizens are able to participate in government.*



A citizen can become properly informed by doing the following:

- Talk to and ask questions of people who are knowledgeable, including teachers, civic leaders, members of parliament and others.
- Get information from officials and government departments involved in a particular issue.
- Make a daily commitment to keep up to date with what is happening in the news. Obtain information from the media (newspapers, magazines, radio, television and social media, eg Facebook, Twitter and blogs). News posted on Twitter is posted in real time and provides the reader with up-to-date news as it happens.

- (d) Use both the Internet and the library to obtain information and to become aware of other sources and references.
- (e) Go back to the original source of the information to check its accuracy.
- (f) Engage in debate and discussions with fellow citizens.

## EXERCISE 2

### How to become informed

Imagine you have heard the following pieces of information and wish to get more details. Where would you go to obtain the information and why would you go to that place?

1. There is a rumour circulating in your area that a road will be built through the middle of your community. This means a number of houses have to be demolished. You would like to know whether the road is going to be built and, if so, which homes may have to be demolished.
2. There is talk that political parties have agreed on a new law. You would like more information about the new law.
3. Your neighbour tells you that the leader of the Green Political Party is going to address the community. You wish to go to the meeting and want to know where it is being held.
4. There is a rumour that the leader of the New Beginning political party has been assassinated by members of the Stability political party. People in your area want you to demonstrate at the offices of the Stability party. How can you obtain information that may help you decide what to do?
5. You hear that the Public Protector has published a report on the investigation into corruption by a well-known politician. You want to know what the report found.
6. You are a student at university. You hear from a friend that a student organisation has barricaded the entrances to the university and no one is allowed to enter the campus. Where will you find out whether this information is correct?



#### 6.2.1 CRITICAL READING

A democracy requires a citizen's thoughtful participation, while a dictatorship insists that the citizen accept the opinion of leaders as true. Thus it is necessary that citizens learn to separate facts from opinions. A fact is a statement that can be backed up with evidence, while an opinion is what a person thinks about an issue. Writers sometimes present their opinions as facts. It is important to

It is important to distinguish opinions from fact by critical reading.

distinguish opinion from fact through critical reading. If readers simply accept the opinion of the writers, then the readers will be allowing the writers to think for them.

It is critical for the reader also to identify unsupported or bad information. If you are not sure about the accuracy of the information, check whether the author cites reliable sources in support of the information. If information lacks references to sources it will more than likely be non-reliable or bad information or 'fake news'. Be aware of the fact that mainstream media often sensationalise the bad parts of a story.

### EXERCISE 3

### Separating fact from opinion

Read the newspaper article below and separate the facts from the opinion of the writer. Put an F next to each sentence that states a fact and an O next to each opinion. Then answer the questions over the page.



## The Daily WATCHDOG

VERY LATE EDITION

LAST WITH THE NEWS • FIRST WITH THE TRUTH

# COPS KILL ROBBERS

**STATISTICS** indicate that there has been an alarming increase in the number of armed robberies in the city. However, yesterday the police struck a decisive blow for law and order.

A group of armed men were gunned down outside a shopping centre when the police received a tip that the men planned to rob a local bank. Some eye witnesses say that the police returned fire after being fired upon. Others state that when the van containing the armed men stopped, the police flung open the doors and started firing.

It does not really matter who fired first. Robbers are robbing and killing innocent people. The only way to stop them is to act decisively and respond in the only language they understand. After the shooting, the five robbers were pronounced dead.

**FOR MORE GORY DETAILS SEE PAGES 4,5,6**



*BLOODY AFTERMATH: the bodies of the slain robbers are carried away.*

## MAYOR DENIES ALL

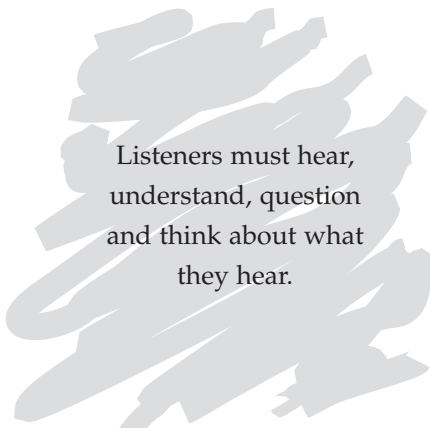
ALLEGATIONS that the Mayor is a corrupt opportunist bent on personal gain were angrily refuted today by the Deputy Mayor's Personal Assistant. Neither the Mayor nor the Deputy Mayor could be reached for comment. They were playing golf.

**More dirt and gossip on pages 7,8,9**



1. Was the article made up mostly of facts or opinions? If the article were made up only of facts, do you think it would affect the reader differently? Give reasons for your opinion.
2. Should a newspaper article be only about facts, or should it mix facts and opinions? Give reasons for your answer.
3. What should a critical reader do when reading such an article?
4. Do you agree with the opinions of the writer in this article? Give reasons for your answer.

### 6.2.2 ACTIVE LISTENING



Listeners must hear, understand, question and think about what they hear.

In a democracy, citizens have a responsibility to listen so that they can hear and learn the truth. The process of hearing requires an active role on the part of the listeners. Listeners must hear, understand, question and think about what they hear. They will then be in an informed position to make a meaningful response. This process will help to prevent misinterpretations and help listeners to remember the message.

Listeners should question speakers and make them defend their positions. Sometimes in politics citizens glorify their leaders and do not question their positions on issues. In a democracy, even the supporters of the candidates or elected officials should question why officials act in certain ways or support specific policies. While citizens in democracies ask questions, citizens in authoritarian systems are not usually allowed to do so.

#### EXERCISE 4

#### Discussing the Marikana massacre

As previously mentioned (see Chapter 3), in 2012 the South African Police Service opened fire on a crowd of striking mine-workers at Marikana and killed 34 workers, wounded 78 and arrested more than 250. The protesting mine-workers were demanding a wage increase at the Lonmin platinum mine. The police claim that they started shooting because their officers had been under attack by a group of mine-workers armed with dangerous weapons, including machetes, spears and clubs. Previously two of their colleagues had been killed by the miners. The mine-workers claim that they were not attacking the police but were involved in a peaceful demonstration on a hillside near the mine.

Divide into pairs: In each pair, one person must argue that the police were correct to open fire on the group of mine-workers, and the other person must argue that the police were not correct to open fire. In each pair, after the first person has argued, the second person must paraphrase what has been said before he or she replies to the first person's argument. The first person must agree that the paraphrasing accurately reflects what was said before the second person may reply. The same procedure is followed after the second person has presented an argument. The first person must paraphrase what the second person said before replying. After the pairs have discussed their views for a few minutes, they should be asked the following questions:





1. What effect did the paraphrasing have on your discussion?
2. When could paraphrasing be useful to you?



In a debate all parties must have a chance to speak.

### 6.2.3 DEBATING ISSUES

A debate involves a clash of ideas. We benefit by hearing other people's ideas and arguments. The way people present their arguments may differ, but the principles of a fair debate are the same. In a debate all the parties must have a chance to speak and must have the opportunity to persuade others that their view is correct. If a person is shouted down or prevented from speaking, then that person's basic right to freedom of speech is being infringed (see Chapter 4). The main benefit of a debate is the exchange of ideas.

## EXERCISE 5

### The case of the anti-Pinko political party

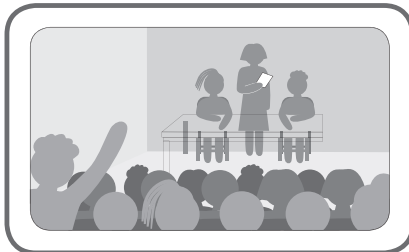
Mr Vasi is a leader of a minority political party that has adopted an anti-Pinko theme in its election campaign. Vasi and his party argue that (a) the Pinkos are dishonest; (b) they should not be granted any trading licences; and (c) the state should take away some of their property without compensation. Mr Vasi plans to speak in an area that has a large Pinko community. Some Pinko citizens have indicated that they will protest by disrupting the meeting.

1. Assume that you are the police commissioner for the area, what would you do?
2. Does a political party have the right to adopt a theme critical of one group as part of its campaign? Should this be allowed?
3. If the anti-Pinko political party holds the rally in the area, what should the Pinkos in the area do? In what way might they participate in this activity? If you were a Pinko, what would you do?

## 6.3 PARTICIPATION IN CIVIL SOCIETY



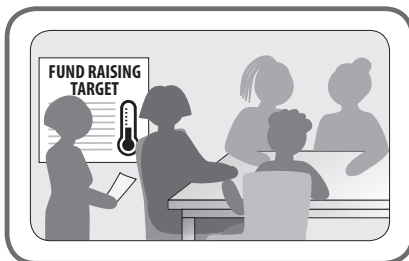
*Neighbourhood watches*



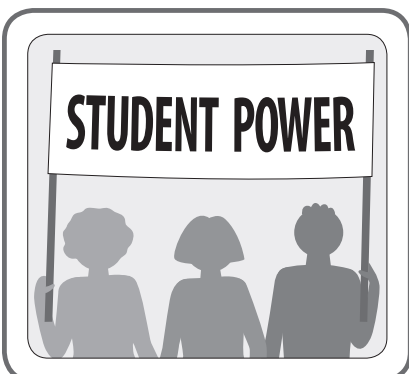
*Civic organisations*



*Religious organisations*



*Women's groups*



*Youth organisations*

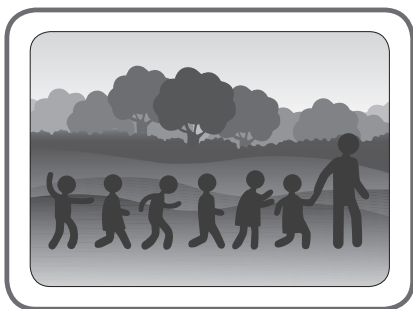
As noted above, citizen participation in a democracy is about more than just voting in elections or other involvement with government. Most participation by citizens takes place in homes and communities. Citizens frequently form their own organisations, which have various goals such as improving the community, preserving the environment, protecting human rights, improving health, or participating in cultural or recreational activities. These types of organisations are referred to as non-governmental, non-profit or community-based organisations, or civic or voluntary organisations. When people act through private non-governmental organisations, they are taking part in what is called 'civil society'. Many people believe civil society is a necessary part of a democracy.

When citizens participate in civil society, they make important decisions and carry out essential programmes. A group of people become a community when they work together towards a common goal. A group of citizens is often more able to influence matters than an individual. Government, public and commercial bodies find it difficult to ignore a group of committed citizens.

Most democracies recognise the importance of civil society in helping the government to achieve certain goals. For example, many religious, non-profit or other voluntary organisations help people who are poor, or in need of food or a place to live. In return, many governments support organisations of this nature by not requiring them to pay taxes or by funding them. Civil society also plays an important role in monitoring and, if necessary, criticising government activities. In dictatorships, the organisations that make up civil society are sometimes greatly restricted in their activities or may even be banned entirely.

The following is a list of some of the community organisations that may exist in your area as a part of civil society:

- (a) neighbourhood watches
- (b) civic groups and organisations
- (c) religious organisations
- (d) women's groups
- (e) youth organisations
- (f) children's organisations
- (g) environmental organisations
- (h) social and sporting groups
- (i) parent-teacher organisations
- (j) human rights or legal assistance groups



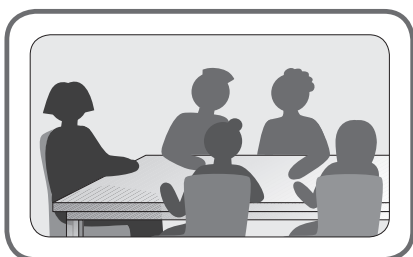
*Children's organisations*



*Environmental organisations*



*Social and sporting groups*



*Parent-teacher organisations*



*Human rights groups*

One characteristic of responsible citizens is their willingness to participate in community activities. This requires more than just belonging to an organisation. It requires citizens to spend time and effort working within the organisations to bring about change.

Civil society includes local, provincial, national and international organisations. However, citizens in a democracy participate most often close to home in their own communities. This is because this is where they face problems every day, such as not having adequate water, not having electricity, poor rubbish collection or not having places for their children to play. Citizens most frequently form organisations to address local problems in their own communities, because this is where they can—

- (a) have a say;
- (b) create and see change;
- (c) have a stake in the change;
- (d) create a sense of community.

Civil society can build a sense of community among the people in a way the government cannot. This is especially true when citizens and their organisations are dedicated to working in a co-operative manner. Co-operation is an important value in a democracy. It can build mutual understanding and what is sometimes referred to as 'common ground'. Common ground means that if people who are different, or have different views, discuss their similarities and differences, they will find that some of their goals and ideas are the same. Co-operation and common ground can provide great support to democracy.

Although citizens most frequently work with community organisations on local problems, civil society also includes citizen participation in organisations that work on provincial, national and international issues. These citizen participation efforts bring about major changes including persuading governments to end wars, ending policies of racial discrimination and stopping development projects that may seriously damage the environment.

**EXERCISE 6****The case of the inadequate school facilities**

Assume that Thandi and her friends attend a township public school. Their school enters a science competition. After the competition the hosts take the girls from the township school on a tour of a former Model C public school. The girls realise that, in comparison, the facilities at their school are totally inadequate and in some cases non-existent. They are convinced that unless facilities at their school are upgraded, they are not going to get an education equal to that of the learners who attend the former Model C public school.

1. Divide into small groups and design a citizen participation plan of action to change the situation.
2. Is it necessary to form an organisation to bring about this change? If yes, how should the organisation be structured? Can other existing organisations assist?
3. Should the effort be local or should it also be conducted on a provincial and national basis? Give reasons for your answer.

**6.4 PARTICIPATION IN PARTY POLITICS**

When people of different views discuss these views with one another, they will find 'common ground'.

**6.4.1 JOINING A POLITICAL PARTY**

In South Africa every citizen is free to form a political party or to join a political party of their choice (see Chapter 4). Some political parties require their members to pay a fee. Others do not. In some countries, a citizen must register to vote before joining a political party. In South Africa there is no requirement that you have to be registered to vote before joining a political party. Any person may recruit members for a particular political party.

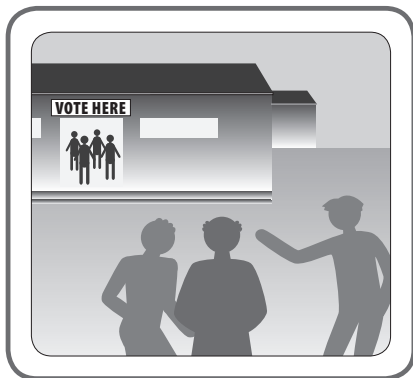
Policies of political parties are influenced by their members when they attend party meetings and organise support for a policy within the party.



### 6.4.2 PARTICIPATION AT ELECTION TIME

Every person is free to campaign for a political party of their choice.

Party members carry out the following important functions at election time:



*Party members can participate in many ways.*

- (a) organising meetings;
- (b) going to people's homes asking for support and explaining the party's policies;
- (c) preparing and displaying posters;
- (d) obtaining donations for political parties;
- (e) transporting voters and providing general assistance on election day;
- (f) voting.

It is essential in any democracy that the wishes of the voters be respected. The losers have an important role to play as the opposition to the government. They must also prepare for the next election and work on changing the minds of the voters. Defeated candidates may return and win the next election (see Chapter 5).

### 6.4.3 AFTER ELECTIONS

It is important to get parties to report back to their constituencies on a regular basis. These meetings keep members of parliament informed about the feelings of their constituents and allow them to explain decisions taken by the party. They also allow the constituency to get regular feedback on the extent to which electoral promises are being kept.

### 6.4.4 STANDING FOR ELECTIONS

In all democracies, eligible voters are entitled to stand for elections for local, provincial or national government (see Chapter 5). In South Africa the Constitution provides that every adult public citizen has the right to stand for public office.

### 6.4.5 PARTICIPATING IN A REFERENDUM

A referendum is when an issue of direct importance to the public is referred to them for a vote (see Chapter 1). A very common example would be where a particular proposed law is referred to the public for a vote. If the government proposes to amend the law to allow for

the imposition of the death penalty for serious crimes, or to adopt a law that will legalise the use of dagga (marijuana), these would be examples of issues that could be referred to a referendum.

The South African Constitution gives the President the power to call for a national referendum, and a provincial Premier to call for a provincial referendum. The President must consult the Deputy President before calling for a national referendum. As previously mentioned, the United Kingdom called for a referendum by its citizens to decide on whether the United Kingdom should leave the European Union, and 52% of its citizens voted to leave, a decision that is commonly referred to as 'Brexit'.

## 6.5 HOW CITIZENS CAN CHANGE PUBLIC POLICY



Distributing leaflets



Newspaper advertisements

Citizens have the power to change and influence public policy in a democracy. One way of doing this is by voting for a political candidate (see Chapter 5).

The following steps assist those seeking to change policy:

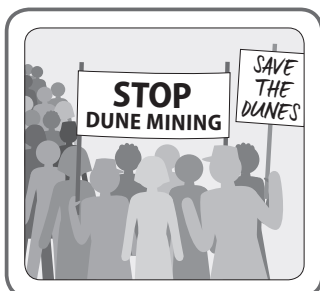
- (a) Identify the policy that should be changed and say why it should be changed.
- (b) Be clear what the new policy should be.
- (c) Join existing organisations or, together with other citizens, form your own organisation.
- (d) Gather all the relevant information.
- (e) Identify all the main role-players who will have an influence in changing the policy.
- (f) Identify organisations supporting and opposing you.
- (g) Draw up, and carry out, a plan of action.

### 6.5.1 LOBBYING

One of the most common ways citizens attempt to influence public policy in a democracy is through lobbying. Lobbying is when citizens and their organisations attempt to influence public officials. This is done through meetings, phone calls or writing letters. Citizens sign petitions as part of lobbying campaigns to persuade lawmakers to vote for a certain proposed law or to have the President or other members of the executive branch adopt a specific policy.



Organising petitions



Protesting and demonstrating

Citizens can use many forms of action to bring about change.

Although many believe that there should be strong regulations concerning lobbying, most democracies allow it as a legitimate way for citizens to have their voices heard. Critics of lobbying say that wealthy people and corporations are better able to hire lobbyists and therefore gain greater influence with public officials than ordinary citizens or the poor.

In addition to lobbying, citizens can take many other actions to bring about change. These include—

- (a) printing and distributing leaflets
- (b) appearing on television and radio to discuss the issue;
- (c) putting advertisements in newspapers and on radio and television;
- (d) signing petitions;
- (e) testifying before governmental bodies;
- (f) protesting and demonstrating;
- (g) boycotting and striking;
- (h) using social media to inform others;
- (i) getting a member of the national or the provincial legislature to ask questions in the national or provincial parliament.

## EXERCISE 7

### Lobbying the Commissioner of Correctional Services

The national government decides to build a prison in your area. Your community opposes the proposal because there will be a large drop in the price of property in the area. The Commissioner of Correctional Services has agreed to meet two representatives of your organisation.

1. Role-play a meeting between members of a community organisation called #PrisonmustFall and the Commissioner of Correctional Services, who supports building the prison in your area.
2. What arguments were presented by the members of the #PrisonmustFall organisation?
3. What arguments were presented by the Commissioner?
4. Which side do you agree with? Give reasons for your answer.
5. Do you think that lobbying is an effective way for citizens to influence public policy? Give reasons for your answer.



6. Assume that you are a member of the organisation #PrisonmustFall. Write a letter to the President of the country to express the views of the organisation. Ask the President to take some action.



## EXERCISE 8

### Commission on violent DVDs

A DVD called 'Death' is released. It contains popular music and sells many copies. The DVD contains graphic scenes of violence and includes a scene in which a woman is attacked and brutally raped. Groups called Concerned Parents and Women against Violence have waged a long campaign to ban the DVD called 'Death'. They are opposed by two groups called Civil Liberties and Free Market. The issue has raised considerable public interest and a parliamentary commission has been established to consider the issue.

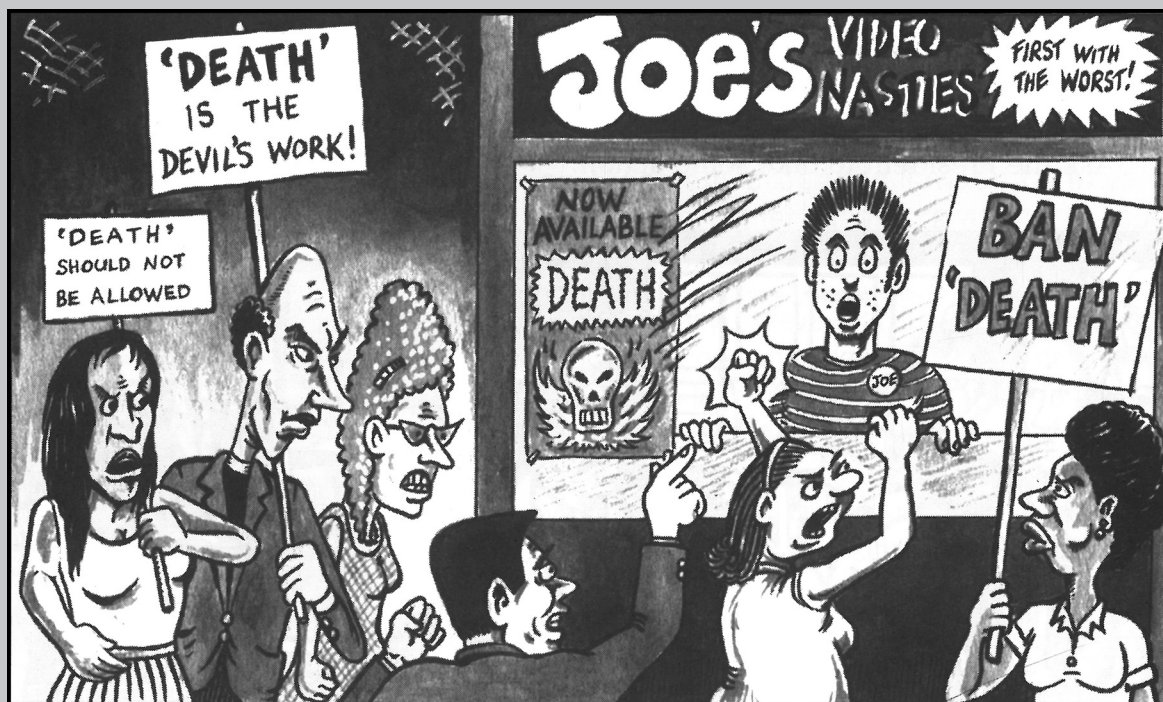
Select five people in the class to be the parliamentary commissioners. Divide the rest of the class into the following four groups, each of which will have to argue before the Commission:

1. Concerned Parents, who argue that the 'Death' DVD will reach children, despite controls. These DVDs will have a highly prejudicial effect upon the children.
2. Women against Violence, who argue that these DVDs promote violence against women and must be banned.
3. Civil Liberties, who argue that the banning would amount to a violation of freedom of expression and artistic freedom.
4. Free Market, who argue that there should be no state interference in commercial or artistic activities. Regulations stifle economic growth and should be kept to the absolute minimum.





Each group must make a three-minute presentation to the parliamentary commission. The Commission must then decide on the policy to be adopted.



## 6.6 PROTESTS AND DEMONSTRATIONS

The right to associate with others and to protest is fundamental to a democracy (see Chapter 4). People often need to march, picket or demonstrate to get publicity for their grievances. Sometimes people participating in a protest or demonstration infringe the rights of others. Courts then have the difficult task of deciding whether the rights of protestors are more important than the rights of others who do not wish to protest. In South Africa we have witnessed a sharp increase in the number of service delivery protests over the last few years. Many of these protests take place in informal settlements and underdeveloped areas where service delivery remains a major challenge. Many protests are related to inadequate government, unemployment, poor education, poverty and other 'bread and butter issues'. Unfortunately, many of these protests are accompanied by violence and destruction. Protests in a democracy should be peaceful and should not resort to violence or criminal activity.

More recently, a social movement of university students demanding free university education has developed which conducted major demonstrations on university campuses throughout the country during 2016. Sometimes the protests have led to the burning of libraries, administration buildings, computer laboratories, motor vehicles and

other property. The protests have also resulted in lectures being disrupted by fire extinguishers, pepper-spray and other forms of violence. The protests have sometimes led to violent reactions to the demonstrations by the police and private security guards called by the universities to safeguard staff, students and other persons on their campuses (see Chapter 4).

**EXERCISE 9****The flag-burning case**

The Revolutionary Party is in the habit of burning the national flag after their meetings. They do this to protest against the present government. The President of the country states that the flag is a symbol of national unity and that many people have given their lives for their country. He says that burning it is deeply offensive to many people and an insult to the memory of those who died. The President wants to prosecute members of the Revolutionary Party for burning the flag after their meetings.


Should the President be allowed to prosecute them? Why or why not?

**EXERCISE 10****Parents shut down public schools because of teacher shortages**

There are over 200 teaching positions vacant in public schools. The Department of Education decides to fill only 100 positions. When the schools open, there are 100 classrooms without teachers. Parents are unhappy because their children receive no instruction. They go to school and sit in classrooms where there are no teachers. Angry parents shut down the schools because of the teacher shortages. They barricade the streets and burn tyres. They will not allow the teachers or children into the schools that they have shut down. The parents insist that the schools will only be reopened after the Department of Education has filled the vacant positions.

Divide into small groups of not more than five persons and discuss the following questions:

1. Identify the rights that are in conflict in the above scenario.
2. Draw up separate lists of arguments for the parents who are keeping the schools closed and the parents who want the schools to reopen.

**6.7 RESPONSIBILITIES TOWARDS OTHER CITIZENS**


Disrespect for the rights of others is not in accordance with democracy.

**A**s members of a community, citizens must act in a manner that benefits the community. It is important to treat others with respect and politely, regardless of their political views. Most communities consist of people from different backgrounds. These differences must be tolerated and the customs and beliefs of others must be respected (see Chapter 4). Disrespect for the rights of others is not in line with a democratic society.

Some laws require citizens to act responsibly. For example, citizens may not infringe the human rights of others by using violence or taking their property. People also may not discriminate against others

because of their race, ethnic background, sex, religion, sexual orientation or disability. Parents must support their children, drivers must obey traffic laws and workers must pay taxes.

Citizens also have responsibilities that are not laid down by law. For example, citizens should practise 'civility', which is to treat others with respect and to be open-minded, hardworking and loyal to democratic principles and values.

It is often necessary to compromise on issues. Compromise prevents political stalemate, indecision and conflict. Compromise encourages harmony, which is essential to a well-functioning community. Compromise requires a person to be civic-minded. This requires the individual sometimes to place the common good above his or her own personal interests. This means showing compassion and being generous, when appropriate.

## EXERCISE 11

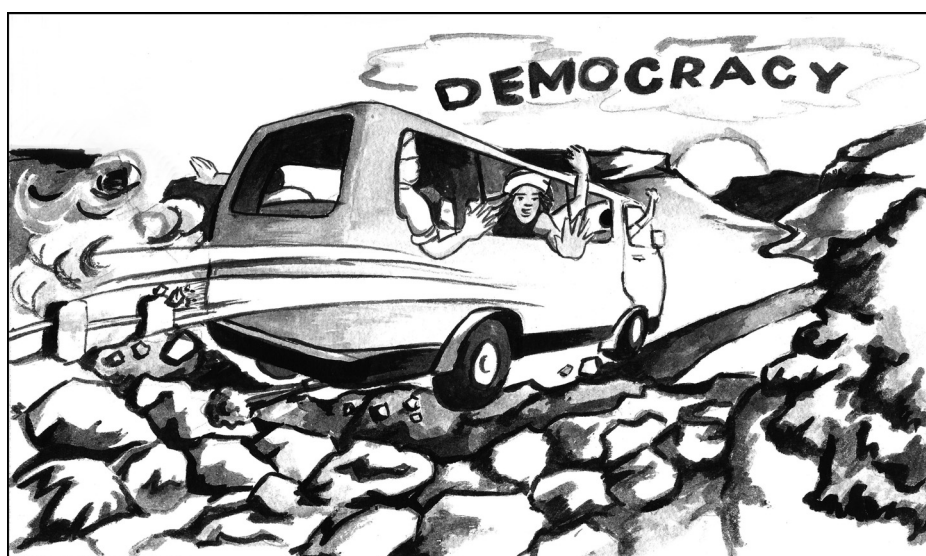
### Citizen action against pollution

You live in an area that has an oil refinery, a paper mill, and a sewage disposal plant. These factories and plants have been operating for several years. After a number of complaints of chest and lung disease, a test is done in your area. An unacceptably high percentage of pollutants is found to be present in the air. The percentage far exceeds the internationally accepted norm. The companies inform you that they are complying with local emission standards. They produce a *Government Gazette* published in 1961 which confirms this. Your community is determined to do something about this situation.

1. What problem does your community wish to address?
2. List the possible actions citizens in your area may take to address this problem.
3. Which action is the most effective type of action citizens can take? Give reasons for your answer.



For additional resources from Civics Academy see: What are the key features of a democracy? <http://www.civicsacademy.co.za/video/key-features-of-democracy> and Why is civic education important? <http://www.civicsacademy.co.za/videos/?category=civil-society>



If everybody practised  
the principles laid down  
in this book, there would  
truly be  
'Democracy for All'.

# GLOSSARY

<b>Absolute power/authority:</b>	No decisions of the ruler may be questioned. (Paras 1.3.2; 1.4)
<b>Abuse of power:</b>	When government officials exercise more power than the law has given them or when the government violates the law or constitution of the country. (Paras 1.7.8; 2.4.2.2; 3.1; 3.1 exercise 1; 3.2; 3.2.1.3; 3.3; 3.3.1; 3.3.4; 3.3.5; 3.3.5 exercise 7; 3.3.6; 3.3.7.1; 3.4; 3.4.1; 3.4.3.5; 3.4.3 exercise 13; 3.4.3 exercise 14)
<b>Accepting defeat:</b>	After a free and fair election; those who have lost power as well as those who failed to gain it must be willing to <b>accept defeat</b> . (Para 5.10)
<b>Access to information:</b>	All citizens have a right to know how government functions and how decisions taken by it may affect their lives. (Paras 3.2; 3.3.5; 3.3.7.7; 4.2.1)
<b>Accountability:</b>	A duty to answer to the public for their decisions; policies and actions (Paras 1.7.4; 3.2; 3.2.1; 3.2.1.1; 3.2.1.3; 3.3; 3.3.1; 3.3.5; 3.4.1)
<b>Actions to bring about change:</b>	These are actions taken by ordinary citizens and leaders in society (Para 6.5.1)
<b>Active listening:</b>	Listeners must hear; understand; question and think about what they hear (Para 6.2.2)
<b>Affirmative action:</b>	Affirmative action is taking steps to favour certain people in society to make up for past <b>discrimination</b> against them by others (Para 4.4.4)
<b>African Charter:</b>	Members of the AU have signed and ratified the African Charter on Human and People's rights; which states that Every individual shall have the right to enjoy the best attainable state of physical and mental health (Paras 3.4.2; 4.3)
<b>African Union:</b>	A regional structure that was established for states in Africa (Para 3.4.2)
<b>Apartheid:</b>	Social policy or racial segregation involving political, economic and legal discrimination against non-whites in South Africa. (Paras 1.2; 2; 2.4.2.3.6; 2.6.3; 3.2.1.1; 3.2.1.2; 3.4; 3.4.1; 4.4.4 exercise 11)
<b>Arab spring:</b>	The 'Arab Spring' was a wave of <b>demonstrations</b> and protests against undemocratic governments that spread throughout the Arab world. (Para 3.4)
<b>Authoritarian system</b>	Those in power hold absolute and unchallengeable authority over the people. (Paras 1.4; 2.5; 3.2.1.3 exercise 3; 6.1; 6.2.2)
<b>Authority:</b>	The power or right to give orders, make decisions, and enforce obedience. (Paras 1.1; 1.4; 1.8; 2.6; 4.5 exercise 15)
<b>Autocracy:</b>	A system of government by one person with <b>absolute power</b> . (Para 1.3.2)
<b>Ballot paper:</b>	A piece of paper on which you indicate your choice. In an election, the names of the political parties and their <b>candidates</b> are printed on the paper next to a box in which voters indicate their choice. (Paras 5.6.3; 5.8.2)
<b>Basic needs:</b>	What human beings need to survive. (Para 4.2.2)
<b>Basic values:</b>	These are values shared by all humanity, regardless of culture. (Para 4.4.1)



- Being informed:** An informed citizen is one that knows or seeks to know the different aspects of society that affect him or her. It is good to know who your elected leaders and representatives are, what their policies and beliefs are, what their duties are and how their offices affect the various aspects of our lives. It is important to know what your role is as a citizen and how you can fulfil it. (Paras 6.2)
- Bigotry:** Intolerance of those who hold different beliefs. (Para 4.4.1)
- Bill of Rights:** A bill of rights is a list of rights and freedoms guaranteed to all people in the country. Usually set out in the country's constitution. (Paras 1.7.3; 1.7.9; 2.1; 2.3; 3.2.1.1; 3.3; 3.3.2; 3.4.3 exercise 12; 4.1; 4.3; 4.3 exercise 2; 4.3 exercise 3; 4.3.1; 4.3.1 exercise 4; 4.3.1 exercise 5; 4.4.4; 4.4 exercise 14; 4.6)
- Bread and butter issues:** The issues around **basic needs** of humans. (Para 6.6)
- Cabinet:** The executive usually consists of a President or **Prime Minister** and a group of ministers known as a cabinet. (Para 1.4 exercise 5; 1.5.1; 2.4.2.1; 2.4.2.2; 3.3.1; 3.3.5; 3.3.7.5)
- Candidate:** Candidates are usually selected by their political party to run for office but they also often make a personal decision to stand for an election. Sometimes people can also stand for election independent of any political party. (Paras 1.4; 1.5.1; 1.7.1; 1.7.12; 1.7 exercise 8; 2.6; 2.6.3; 3.3.5; 3.3 exercise 10; 4.4.5; 5.1; 5.3; 5.3 exercise 3; 5.5; 5.5 exercise 6; 5.6.1; 5.6.2; 5.6 exercise 9; 5.8.2; 5.9; 5.10 exercise 16; 6.2.2; 6.4.2; 6.5)
- Challenge:** A **challenge** to something is a questioning of its truth or value or a questioning of someone's **authority**. (Para 1.2; 2.6.1; 3.2; 3.2.1.1; 3.3; 3.3.2; 3.4.2; 4.4.4; 5.4; 5.10; 5.10 exercise 16; 6.1 exercise 1; 6.6)
- Changing public policy:** Citizens have the power to change and influence public policy in a democracy. One way of doing this is by voting for a political **candidate**. (Para 6.5)
- Changing the Constitution:** A process which should require more than changing ordinary laws. (Para 2.3)
- Checks and balances:** Democratic countries use the separation of powers to enable the different branches of government to check or limit each other's powers. (Para 1.5.2; 1.5.3; 3.3.1)
- Chief:** The head of a tribe and is seen as a traditional leader. (Para 1.4 exercise 5; 2.4.1; 2.4 exercise 5; 2.4.2.3; 2.4.2.3.6; 4.5 exercise 15; 5.6.3 exercise 9)
- Citizen participation:** Citizen participation may take many forms including standing for election, voting in elections, becoming informed, debating issues, attending community or civic meetings, being members of private voluntary organisations, paying taxes, and even protesting. Participation builds a better democracy. (Para 1.7.1; 1.7.8; 4.4; chapter 6; 6.1; 6.3; 6.3 exercise 6)
- Citizen responsibility:** One characteristic of responsible citizens is their willingness to participate in community activities. This requires more than just belonging to an organisation. It requires citizens to spend time and effort working within the organisations to bring about change. (Para 5.1; 6.2.2.2)
- Citizens versus subjects:** In **dictatorships** and other non-democratic systems; there are usually rulers and subjects. In a democracy; citizens elect their leaders. (Para 6.1)
- Civil disobedience:** The refusal by people in a country to obey laws or pay taxes, usually as a protest. (Para 1.2)

<b>Civil rights:</b>	Civil rights often include the right (a) to liberty; (b) to <b>equality</b> ; (c) to practise religion or not, as you choose; (d) not to be assaulted or tortured; (e) not to be detained without trial; (f) not to be killed; and (g) to receive a <b>fair trial</b> . (Paras 4.2.1; 4.2.2; 4.4.4)
<b>Civil society:</b>	When people act through private non-governmental organisations; they are taking part in what is called 'civil society'. (Paras 3.3; 6.3)
<b>Coalition:</b>	In the event of no one party receiving a clear majority of the votes; parties sometimes join together and form what is called a coalition government. (Paras 2.4.2.1; 2.6.3; 5.3; 5.4)
<b>Colonial exploitation:</b>	The national economic policy of conquering a country to exploit its natural resources and its native population. (Para 4.3)
<b>Common ground:</b>	Mutual understanding. (Para 6.3)
<b>CIS:</b>	Commonwealth of Independent States (Para 2.4.1)
<b>Communism:</b>	A theory or system of social organization in which all property is owned by the community and each person contributes and receives according to their ability and needs. (Para 2.5)
<b>Community organisations:</b>	Community organisations are formal or informal groups of people based in or around a 'community' and are organised in some way, usually having some structure, rules or legal entity but sometimes being just an informal association. (Paras 2.6.1; 6.1 exercise 1; 6.3; 6.5 exercise 7)
<b>Compromise:</b>	Those negotiating and writing a constitution may agree to certain language going into one provision in exchange for getting support for another provision they are particularly interested in. Compromises often come about to enable the constitution to gain the broadest support possible. (Paras 2.2; 2.4.2.1; 6.7)
<b>Confederation:</b>	Separate states are linked together to co-operate in certain ways but are otherwise basically independent from each other. (Para 2.4.1)
<b>Conflicting rights:</b>	There are many situations in which rights, interests, and values seem to conflict or compete. When evaluating situations of competing rights, human rights and other legally codified rights will usually hold a higher status than interests and values. (Paras 4.3; 4.5; 4.5 exercise 14)
<b>Constituency:</b>	A group of voters in a specified area who elect a representative to a <b>legislative body</b> . (Paras 1.5.1; 2.4.2.1; 5.3; 6.4.3)
<b>Constituent assembly:</b>	A constituent assembly or constitutional convention is a special meeting called to draw up a constitution. (Paras 2.2; 2.2 exercise 2)
<b>Constitutional democracy:</b>	A system of government in which the structure, powers and limits of the government are set out in a constitution. (Paras 2.4.2.3.6; 3.3.7; 3.3.7.2)
<b>Constitutional monarchy:</b>	Some representative democracies have kings or queens who have inherited their positions. These are constitutional monarchies. The kings and queens are usually figure-heads, meaning they symbolise the country but have very limited power. (Para 1.3.2)
<b>Co-operative governance:</b>	Co-operative governance means that the three levels of government should work together (co-operate) to provide citizens with a full package of services (governance). (Paras 2.6.2; 4.4.5)
<b>Corruption:</b>	Dishonest or fraudulent conduct by those in power, typically involving bribery. (Paras 1.5.1; 1.7.6; 1.7.8; 3.1; 3.3.5; 3.3.7.1; 3.4.3 exercise 12; 4.4.1 exercise 7; 6.2 exercise 2)

<b>Councillors:</b>	Representatives of citizens at <b>local government</b> level. (Paras 1.5.1; 2.4.1 exercise 5; 2.6.1; 2.6.4; 2.6.5; 2.6.6; 3.1 exercise 1; 3.3.7.6 exercise 10; 3.3.7.7 exercise 11; 5.3)
<b>Coup:</b>	A sudden, violent and illegal seizure of power from a government. (Paras 2.4.2.2; 3.3.3 exercise 6; 4.6)
<b>Critical reading:</b>	It is important to distinguish opinions from fact by critical reading. If readers simply accept the opinion of the writers, then the readers will be allowing the writers to think for them. (Para 6.2.1)
<b>Cultural rights:</b>	The objective of these rights is to guarantee that people and communities have access to culture and can participate in the culture that they choose. (Paras 4.2; 4.2.2; 4.5)
<b>Culture of dependency:</b>	A way of life characterised by dependency on state benefits. (Para 4.3)
<b>Curfew:</b>	A regulation requiring people to remain indoors between specified hours, typically at night. (Paras 3.2.1.3 exercise 5; 4.6 exercise 16)
<b>Debate:</b>	A debate involves a clash of ideas. We benefit by hearing other people's ideas and arguments. (Para 1.7.7; 2.2 exercise 2; 2.3 exercise 3; 2.4.1; 2.4.2.1 exercise 6; 2.4.2.1 exercise 7; 2.5 exercise 10; 3.2.1.3; 3.2.1.3 exercise 3; 3.2.1.3 exercise 4; 5.6.2; 6.1 exercise 1; 6.2; 6.2.3)
<b>Decision-making:</b>	In a democracy, citizens should be involved in the decision-making process at all levels of government but this is impossible in practice, therefore representatives are elected to decide on their behalf. (Paras 1.3.1; 2.6.1; 2.6.2; 3.2)
<b>Defeat:</b>	In a democratic system, parties and <b>candidates</b> must accept the fact that they have lost support in an election. (Paras 5.10)
<b>Demonstrations:</b>	These take place when members of a society wish to show their dissatisfaction. They can take on many forms but often are marches, sit-ins or occupation of buildings. (Paras 3.1 exercise 1; 3.2.1.3 exercise 5; 3.4; 4.4; 4.4.3; 4.4.3 exercise 9; 5.5 exercise 7; 6.1 exercise 1; 6.6.2 exercise 4; 6.6)
<b>Development(al) rights:</b>	Developmental rights include the right to economic advancement (eg the right of a group of people to advance themselves financially). (Para 4.2; 4.2.3; 4.3; 4.5)
<b>Dictatorship:</b>	In a dictatorship one person, or a small group of people, holds the power. The dictator's word is law. The dictator or those who rule are not responsible for the <b>will of the people</b> . (Paras 1.3.2; 1.4; 1.4 exercise 5; 1.7.12; 2.2; 2.4.1; 3.2.1.2; 4.3; 4.3 exercise 3; 4.4.3; 5.4; 5.5 exercise 7; 6.1; 6.2.1; 6.3)
<b>Direct democracy:</b>	Direct democracy means personal rule by the people. (Paras 1.3.1; 1.3.2 exercise 4; 1.4 exercise 5; 2.6)
<b>Directives:</b>	People who are opposed to including social and economic rights in a <b>bill of rights</b> argue that these can be included as guidelines for the government and should form part of a political party's <b>manifesto</b> and not be fixed in the bill of rights. Sometimes these guidelines are called directives of state policy. (Paras 2.6; 4.3)
<b>Director of Public Prosecutions:</b>	The Director of Public Prosecutions (DPP) is the official charged with the prosecution of criminal offences. (Paras 3.3.3 exercise 6; 3.4.3.5 exercise 13; 3.4.3.5 exercise 14)
<b>Discrimination:</b>	Discrimination is the practice of treating one person or group of people less fairly or less well than other people or groups. (Paras 1.7.7; 2.4.1 exercise 4; 3.2; 4.2.2; 4.3.1; 4.4.4; 4.4.4 exercise 12; 5.3 exercise 4; 6.3)

<b>Disrespect:</b>	If someone shows disrespect, they speak or behave in a way that shows lack of respect for a person, law or custom. (Para 6.7)
<b>Distribution:</b>	The unequal distribution of private economic power almost always translates into the unequal distribution of access to political power. (Para 4.4.5)
<b>Diversity:</b>	Not being the same. (Para 1.7.3)
<b>Division of powers:</b>	Our Constitution contains an important democratic principle called the separation of powers. That means that the power of the state is divided between three different but interdependent components or arms, namely the executive (Cabinet), the legislature (Parliament) and the <b>judiciary</b> (Courts of law). (Para 1.5.3)
<b>Due process of law:</b>	An important way to check the <b>abuse of power</b> is to establish fair procedures, especially when dealing with the public. These procedures are sometimes called 'due process of law'. (Paras 1.7.13; 3.3.6; 4.5)
<b>Economic freedom:</b>	This means that the government allows some <b>private ownership</b> of property and businesses, and that the people are allowed to choose their own work and trade unions. (Paras 1.7.7)
<b>Economic rights:</b>	Examples of economic rights are (a) the right to work; (b) the right to housing; (c) the right to an adequate standard of living; and (d) the right to a pension if you are old or disabled. (Paras 4.2.2; 4.3; 4.3 exercise 3)
<b>Election promises:</b>	An election promise or <b>campaign</b> promise is a promise or guarantee made to the public by a <b>candidate</b> or political party that are trying to win an election. (Para 1.2)
<b>Electoral codes of conduct:</b>	The Electoral Code of Conduct, contained in the Electoral Act, details a list of prohibited conduct including: using language which provokes violence, <b>intimidation of candidates</b> or voters and generally abusing a position of power, privilege or influence to influence the outcome of an election. (Para 5.6.2)
<b>Entrenchment:</b>	Making it difficult to change a constitution is sometimes referred to as 'entrenching' the provisions of a constitution. Those in favour of this approach argue that this should be done because the constitution should consist of the <b>fundamental principles</b> of the government which should not be subject to easy revision. (Para 2.3)
<b>Equal political players:</b>	Having the same opportunities to attract voters in an election. (Para 4.4.3)
<b>Equality:</b>	Equality means that all individuals are valued equally, have equal opportunities and may not be discriminated against because of their race, religion, ethnic group, gender or sexual orientation. (Paras 1.7.2; 1.7.11; 2.5; 3.2.1.1; 3.3.7.3; 3.3.7.4; 4.2; 4.2.1)
<b>Exceeding power:</b>	Limitation of human rights. (Para 4.6)
<b>Exclusion:</b>	Not being included, for example, not allowing black people or women to vote or not allowing certain evidence to be presented. (Paras 1.3.1; 3.2.1.1; 4.4.2; 5.6.3)
<b>Executive branch:</b>	The executive branch of the government carries out the laws. (Paras 1.4; 1.5.1; 1.5.2; 1.5.3; 2.1 exercise 1; 2.4.2; 2.4.2.2; 2.4.2.3; 2.4.2.3.6 exercise 9; 3.3; 3.3.1; 4.4.4; 4.4.5; 5.5 exercise 7; 5.7; 6.5.1)
<b>Executive council:</b>	A council consisting of <b>premiers</b> who have executive powers. They head up the provincial executive councils, which are the same as <b>cabinets</b> . (Para 1.5.1)
<b>Faction:</b>	A small organised dissenting group within a larger one, especially in politics. (Paras 3.3.7.7 exercise 11; 5.4)



<b>Fair trial:</b>	A Fair Trial is the best means of separating the guilty from the innocent and protecting against injustice. Without this right, the <b>rule of law</b> and public faith in the <b>justice</b> system collapse. The Right to a Fair Trial is one of the cornerstones of a just society. (Paras 3.2.1.1; 4.2.1)
<b>Federal system:</b>	A system of federalism is when both central and provincial or state governments are supreme regarding certain powers (sometimes called 'original powers'). (Paras 2.4.1; 2.6)
<b>Feedback:</b>	It is important to get parties to report back to their constituencies on a regular basis. (Para 6.4.3)
<b>Figure-heads:</b>	They symbolise the country but have very limited power. (Para 1.3.2)
<b>Free and fair election:</b>	For free and fair elections to occur, most adult citizens should have the right to stand for <b>government office</b> . Additionally, obstacles should not exist which make it difficult for people to vote. (Paras 1.7.6; 1.7.8; 3.4.3.5 exercise 12; 5.1; 5.6; 5.6.1; 5.6.2; 5.6.3; 5.6.3 exercise 9; 5.7; 5.8; 5.8.2; 5.8.2 exercise 12; 5.10)
<b>Free market:</b>	The role the government should play in the economy is open to <b>debate</b> , but it is generally accepted that free markets should exist in a democracy and that the state should not totally control the economy. (Paras 1.7.7; 2.5; 6.5.1 exercise 8)
<b>Free vote:</b>	Such a vote may not necessarily be by <b>secret ballot</b> but will be if a <b>referendum</b> is held. (Para 1.5.1)
<b>Freedom of assembly:</b>	Freedom of assembly means that people should have the right to assemble, demonstrate and meet peacefully without interference from others. (Paras 4.4; 4.4.3; 4.4.3 exercise 9; 4.4.3 exercise 10; 5.6.2)
<b>Freedom of association:</b>	Freedom of association means that people should have the right to belong to organisations of their choice, and the right not to be forced to belong to or support other organisations. (Paras 3.3.7.3; 4.4; 4.4.2; 4.4.2 exercise 8; 4.4.3; 5.6.2)
<b>Freedom of choice:</b>	Freedom of choice is the right of individuals to determine their own actions. (Para 2.5)
<b>Freedom of expression:</b>	Freedom of expression means the right to communicate as well as the right to receive information and ideas. It takes many forms and does not just consist of words. (Paras 1.4; 1.7.11; 3.3.2; 3.4.3.5; 4.4; 4.4.1; 4.4.5; 5.6.2; 6.5.1 exercise 8)
<b>Freedom of speech:</b>	See <b>freedom of expression</b> (Paras 4.3; 4.4.1; 6.2.3)
<b>Freedom of the press:</b>	The right to circulate opinions in print without censorship by the government. (Paras 1.4)
<b>Frequency of elections:</b>	Elections must be held regularly at determinable intervals. (Para 5.7)
<b>Fundamental principles:</b>	Democratic principles are defined as the ideas which most people believe are essential for a democracy. (Paras 1.1; 1.6; 2.3)
<b>Funds:</b>	The money necessary to function. (Paras 1.7.8; 2.4.2.3; 4.3; 4.3.1 exercise 5; 4.5 exercise 14)
<b>Government office:</b>	A position in national, provincial or <b>local government</b> structure. (Paras 1.7.6; 4.3.1 exercise 5)
<b>Hate speech:</b>	Hate speech is speech which attacks a person or group on the basis of attributes such as race, religion, ethnic origin, sexual orientation, disability or gender. (Paras 3.3.7.2; 4.4.1)

<b>Horizontal operation:</b>	A horizontal <b>bill of rights</b> protects citizens from violations of their human rights by fellow citizens (Paras 4.3.1; 4.3.1 exercise 4; 4.3.1 exercise 5)
<b>Illegitimate government:</b>	An illegitimate government will usually be <b>challenged</b> by the citizens by engaging in riots, protest and <b>civil disobedience</b> . (Paras 1.2; 1.2 exercise 3)
<b>Independent electoral bodies:</b>	An independent body that is responsible for managing elections at all levels of government. (Paras 3.3.7.6; 5.6.1)
<b>Individual representation:</b>	In the individual representation system, political parties select individual <b>candidates</b> to represent certain areas called 'constituencies'. (Paras 2.4.2; 5.3)
<b>Infringement of rights:</b>	Where exercising your right, takes away the rights of others. The rights must be weighed up, usually by a court. (Paras 4.4.3; 6.6; 6.7)
<b>Intimidation:</b>	To frighten or threaten someone, usually in order to persuade them to do something that you want them to do. (Paras 1.7.6; 3.3.5 exercise 8; 4.4.3 exercise 9; 5.6.3; 5.8.2; 5.8.2 exercise 12)
<b>Judicial review:</b>	A court's <b>authority</b> to examine an executive or legislative act if it is contrary to constitutional principles. (Paras 2.4.2.3; 3.4.3 exercise 13; 4.1)
<b>Judiciary:</b>	The judiciary is made up of the courts of the country. (Paras 2.4.2; 2.4.2.3; 2.4.2.3.6 exercise 9; 3.3.1; 4.4.4; 4.4.5)
<b>Justice:</b>	The act of being fair and moral. (Paras 1.2; 2.4.2.2; 2.4.2.3; 3.2.1.1; 3.3.1; 5.3 exercise 4)
<b>Legislative body:</b>	In a <b>parliamentary democracy</b> , voters elect representatives to a legislative body called a parliament, which makes laws. It is also referred to as the legislature. (Paras 1.4; 1.5.1; 1.5.2)
<b>Legislative branch:</b>	One of the three branches of government, namely the executive, <b>judiciary</b> and legislature. This branch is responsible for passing legislation. (Paras 1.5.1; 2.4.2.1; 2.4.2.2; 2.4.2.3; 3.3.1)
<b>Legitimacy:</b>	Conforming to the law.(Paras 1.2)
<b>Lobbying:</b>	Lobbying is when citizens and their organisations attempt to influence public officials. (Paras 2.6.2; 6.5.1; 6.5.1 exercise 7)
<b>Local government:</b>	Local government is a form of public administration which exists as the lowest level of administration within a given state. (Paras 1.3.1; 1.5.1; 2.4.1; 2.4.1 exercise 4; 2.4.1 exercise 5; 2.6; 2.6.1; 2.6.2; 2.6.3; 2.6.6 exercise 11; 3.1 exercise 1; 3.3.7.6 exercise 10; 3.3.7.6 exercise 11; 5.3; 5.4)
<b>Mandate:</b>	In a democracy, the government receives its power from a mandate of its citizens. This democratic mandate gives the government the power to govern by passing and enforcing laws. (Paras 1.2; 2.6.2; 3.3.5)
<b>Manifesto:</b>	A public declaration of policy and aims, especially one issued before an election by a political party or <b>candidate</b> . (Para 4.3)
<b>MEC:</b>	Members of the <b>executive council</b> . (Paras 1.5.1)
<b>Metropolitan municipality:</b>	Metropolitan municipalities exist in the six biggest cities in South Africa and the metropolitan municipality co-ordinates the delivery of services to the whole area. These municipalities are broken into wards. (Paras 2.4.1; 2.4.2.1; 2.6.3; 2.6.4; 2.6.5; 5.3)
<b>Minority:</b>	Less than half of the whole group. (Paras 1.7.3; 2.4.2.1; 2.5 exercise 10; 3.4.3.5 exercise 12; 4.3.1 exercise 5; 4.4.3 exercise 9; 4.4.3 exercise 10; 4.4.4; 4.5 exercise 14; 5.4; 6.2.3 exercise 5)

<b>Multi-party system:</b>	More than one political party must participate in elections and play a role in government. (Paras 1.7.12; 3.2.1.3 exercise 3; 3.3; 3.3.4; 3.4.3.5 exercise 13; 5.4 exercise 5)
<b>National Assembly:</b>	The National Assembly consists of the elected members of Parliament. (Paras 1.5.3 exercise 6; 2.3; 2.4.2.1; 2.4.2.2; 3.3.7; 3.3.7.1 case study)
<b>National Council of provinces:</b>	It comprises the elected members of the <b>executive councils</b> of the provinces. (Paras 2.3; 2.4.2.1; 2.6.2)
<b>National government:</b>	In a <b>unitary system</b> the government at national level makes decisions and laws for the country as a whole. (Paras 2.4.1; 2.6; 4.4.5; 6.4.4; 6.5.1 exercise 7)
<b>Nationalisation:</b>	Government ownership, or nationalisation of some industries, and an attempt to provide extensive social services such as medical care, housing and education to people free of charge (Para 2.5)
<b>Opposition:</b>	People who are not in power must be allowed to organise and speak out. Minorities are sometimes referred to as 'the opposition' because they may have ideas which are different from those of the majority. (Paras 1.5.3 exercise 6; 1.7.3; 1.7.12; 2.4.2.2; 2.6.3; 3.3.4; 3.3.5; 3.3.7.6 exercise 10; 3.4.3.5 exercise 12; 4.4.1 exercise 7; 4.6 exercise 16; 5.3; 5.4; 5.4 exercise 5; 5.6.3 exercise 9; 5.7; 5.10; 5.10 exercise 16; 6.4.2)
<b>Parliamentary democracy:</b>	In a parliamentary democracy, voters elect representatives to a <b>legislative body</b> called a parliament. (Paras 1.4; 1.5.1; 1.5.3 exercise 6)
<b>Party members:</b>	Join political parties to actively participate in party matters, such as elections. (Paras 1.5.1; 2.4.2.1; 3.2.1.3 exercise 3; 6.4.2)
<b>Party politics:</b>	Policies of political parties are influenced by their members when they attend party meetings and organise support for a policy within the party. (Para 6.4)
<b>Political campaigns:</b>	Political campaigns enable citizens to make informed choices in an election. (Paras 5.6.1; 5.6.2)
<b>Political participation:</b>	In a democracy everyone has the right, if not a duty, to take part in the politics of the country. (Para 4.4.5)
<b>Political rights:</b>	Political rights are the rights citizens have to participate in the political life of their community and society (eg by voting for their government). (Paras 4.2; 4.2.1; 4.3)
<b>Political tolerance:</b>	This means that while the majority of the people rule in a democracy, the rights of the <b>minority</b> must be protected. (Paras 1.7.3; 4.4.3 exercise 10; 5.9; 5.9 exercise 13; 5.10)
<b>Premier:</b>	The provinces in South Africa have <b>Prime Ministers</b> who are called premiers. (Paras 1.5.1; 6.4.5)
<b>Presidential democracy:</b>	In a presidential democracy, the legislative and <b>executive branches</b> of government are independent of each other. (Paras 1.4.5; 1.5.2; 1.5.3; 1.5.3 exercise 6)
<b>Prime Minister:</b>	Members of parliament then choose a person to head the <b>executive branch</b> of government. That person is usually called a Prime Minister. (Paras 1.4 exercise 5; 1.5.1; 1.5.3; 1.5.3 exercise 6; 2.4.2.1; 2.4.2.2; 3.3.1; 3.3.3)
<b>Privacy:</b>	The right of a person to be free from intrusion into or publicity concerning matters of a personal nature (Paras 3.3.5; 4.2.2; 4.5)
<b>Private ownership:</b>	When all property does not belong to the state. (Paras 1.7.7; 2.5)

<b>Proportional representation:</b>	Means that people usually vote for a political party, not for individuals. (Paras 1.5.1; 2.4.2.1; 2.6.4; 2.6.5; 2.6.6; 4.4.5; 5.3; 5.3 exercise 3)
<b>Provincial government:</b>	Administration of matters pertaining to a particular province. (Paras 2.4.1; 4.4.5)
<b>Provincial legislature:</b>	The members of the National Council of Provinces in each province. (Paras 1.5.1; 5.3; 5.3 exercise 3; 6.5.1)
<b>Public office:</b>	Candidates should not stand for public office because they want power or nancial gain, but because they want to help improve their society. (Paras 1.3.1; 5.5; 5.5 exercise 6; 6.4.4)
<b>Public service:</b>	The government workers, often called the public service , are all part of the <b>executive branch</b> of government. (Paras 2.4.2.2; 3.2)
<b>Referendum:</b>	A referendum is when an issue of direct importance to the public is referred to them for a vote. (Paras 1.3.1; 1.4 exercise 5; 1.5.1; 5.1; 6.4.5)
<b>Representative democracy:</b>	In an indirect or representative democracy, the people elect representatives to make decisions for them. (Paras 1.3; 1.3.2; 1.3.2; 1.4; 1.4; exercise 4; 1.4 exercise 5; 2.6)
<b>Restricted human rights:</b>	<b>Dictatorships</b> usually prevent people from exercising their human rights. It may also be necessary when certain rights interfere with other citizens' rights or in <b>states of emergency</b> . By (Paras 1.4; 2.5; 4.1)
<b>Right to education:</b>	There must be equal opportunities to learning. (Paras 1.7.11; 4.2.2; 4.5 exercise 14)
<b>Right to equality:</b>	All citizens must be treated in the same way by the branches of government. (Paras 1.7.11; 4.4.4; 4.5)
<b>Rule of law:</b>	This means that everyone must obey the law and be held accountable if they violate it. No one is above the law. (Paras 1.7.13; 2.4.2.2; 2.4.2.2 exercise 8; 3.3.3; 3.4.3.5 exercise 13)
<b>Secret vote/ballot:</b>	All votes are secret in the voting booth and no one can see where the voters mark the <b>ballot paper</b> . Voters place the folded ballot into the sealed ballot box. (Paras 1.5.1; 4.4.5; 5.6.2; 5.6.3; 5.8.2)
<b>Separate but equal doctrine:</b>	This was government policy during <b>apartheid</b> but was false in practice. (Para 4.4.4)
<b>Service delivery:</b>	The provision of water, electricity, etc. (Paras 2.6.3; 2.6.6; 6.6)
<b>Social media:</b>	There are various social media platforms, eg Facebook and Twitter. Social media is a powerful tool that can be used to disclose <b>abuse of power</b> . (Paras 3.3.5; 3.4; 4.4.1; 4.4.5; 5.6.2; 6.2; 6.5.1)
<b>Social rights:</b>	Human rights within the society in which we live. (Para 4.2.2)
<b>Socialism:</b>	Characterised by central government control over decisions, it usually includes government ownership, or <b>nationalisation</b> of some industries, and an attempt to provide extensive social services such as medical care, housing and education to people free of charge. (Paras 2.5; 2.5 exercise 10; 5.3 exercise 4)
<b>State capture:</b>	It occurs when rich businessmen end up in uencing government officials regarding government policy. (Paras 2.5; 5.6.2)
<b>State of emergency:</b>	A state of emergency is declared when there is instability or civil unrest in the country. (Paras 3.2.1.1; 3.2.1.3 exercise 5; 4.6; 4.6 exercise 16)



<b>Term of office:</b>	A term of office is the length of time a person serves in an elected office. In many jurisdictions, there is a defined limit on how long terms of office may be before the officeholder must be subject to re-election or may not be re-elected. (Paras 1.5.1; 3.2)
<b>Totalitarian government:</b>	This means that the government attempts to have power over all aspects of human affairs, not just government affairs. (Para 1.4)
<b>Transparency:</b>	For government to be accountable the people must be aware of what is happening in the country. This is referred to as transparency in government. (Paras 1.7.5; 3.2; 3.2 exercise 2; 3.2.1; 3.2.1.1; 3.2.1.2; 3.2.1.3; 3.2.1.3 exercise 4; 3.3; 3.3.1; 3.3.5)
<b>Unitary system:</b>	A unitary system of democracy is when the central or <b>national government</b> is given superior power but can delegate some powers to provincial and <b>local governments</b> . (Paras 2.4.1; 2.4.1; 2.6)
<b>Vertical operation:</b>	A vertical <b>bill of rights</b> protects citizens from things done by the government which might undermine their human rights. This means that citizens will only be protected if the government has been involved in the act which affects their rights. (Paras 4.3.1; 4.3.1 exercise 4; 4.3.1 exercise 5)
<b>Vote of no confidence:</b>	If the <b>Prime Minister</b> loses support and receives a ' <b>vote of no confidence</b> ' from a majority of the legislature, he or she must resign from office and a new <b>Prime Minister</b> and <b>cabinet</b> are elected by parliament. (Paras 1.5.1; 5.7)
<b>Voting procedures:</b>	The main steps that take place during voting in a <b>free and fair</b> election. (Paras 5.8; 5.8.2 exercise 11)
<b>Ward councillor:</b>	The representative of voters in the ward (area) in which they live. Municipalities are divided into wards. (Paras 1.5.1; 2.6.4; 2.6.5; 5.3)
<b>Will of the people:</b>	It is expressed by voting for representatives. (Paras 1.3.2; 1.4)
<b>Xenophobia:</b>	It is a form of intolerance aimed at foreigners in a country, which may be caused by political or economic factors. (Paras 1.7.3; 3.3.7.2; 4.4.4)

# ANNEXURE A

## UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948) (Abbreviated)

- 1 Article 1: Right to equality
- 2 Article 2: Right to freedom from discrimination
- 3 Article 3: Right to life, liberty, personal security
- 4 Article 4: Right to freedom from slavery
- 5 Article 5: Right to freedom from torture, degrading treatment
- 6 Article 6: Right to recognition as a person before the law
- 7 Article 7: Right to equality before the law
- 8 Article 8: Right to remedy by a competent court
- 9 Article 9: Right to freedom from arbitrary arrest, exile
- 10 Article 10: Right to fair public hearing
- 11 Article 11: Right to presumption of innocence until proved guilty
- 12 Article 12: Right to privacy
- 13 Article 13: Right to freedom of movement
- 14 Article 14: Right to asylum in other countries
- 15 Article 15: Right to nationality and freedom to change it
- 16 Article 16: Right to marriage and a family
- 17 Article 17: Right to own property
- 18 Article 18: Right to freedom of belief and religion
- 19 Article 19: Right to freedom of opinion and information
- 20 Article 20: Right of peaceful assembly and association
- 21 Article 21: Right to participate in government
- 22 Article 22: Right to social security
- 23 Article 23: Right to desirable work and trade unions
- 24 Article 24: Right to rest and leisure
- 25 Article 25: Right to adequate living standard
- 26 Article 26: Right to education
- 27 Article 27: Right to participate in cultural life
- 28 Article 28: Right to social order of human rights
- 29 Article 29: Community duties for free and full development
- 30 Article 30: Freedom from interference in above rights

# **ANNEXURE B**

## **AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS**

### **Part I: Rights and Duties Chapter I: Human and Peoples' Rights**

#### **Article 1**

The Member States of the Organization of African Unity parties to the present Charter shall recognise the rights, duties and freedoms enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them.

#### **Article 2**

Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

#### **Article 3**

1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.

#### **Article 4**

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

#### **Article 5**

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

#### **Article 6**

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

#### **Article 7**

1. Every individual shall have the right to have his cause heard. This comprises:
  - (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force;

- (b) the right to be presumed innocent until proved guilty by a competent court or tribunal;
  - (c) the right to defense, including the right to be defended by counsel of his choice;
  - (d) the right to be tried within a reasonable time by an impartial court or tribunal.
2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

#### **Article 8**

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

#### **Article 9**

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

#### **Article 10**

1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligation of solidarity provided for in Article 29, no one may be compelled to join an association.

#### **Article 11**

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

#### **Article 12**

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.
2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.
3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions.
4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.
5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.



**Article 13**

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right of equal access to the public service of his country.
3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

**Article 14**

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

**Article 15**

Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

**Article 16**

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

**Article 17**

1. Every individual shall have the right to education.
2. Every individual may freely take part in the cultural life of his community.
3. The promotion and protection of morals and traditional values recognised by the community shall be the duty of the State.

**Article 18**

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and morals.
2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognised by the community.
3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.
4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

**Article 19**

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights.

Nothing shall justify the domination of a people by another.

**Article 20**

1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.
2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognised by the international community.
3. All peoples shall have the right to the assistance of the State Parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

**Article 21**

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.
2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.
3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic co-operation based on mutual respect, equitable exchange and the principles of international law.
4. State Parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.
5. State Parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

**Article 22**

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

**Article 23**

1. All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organisation of African Unity shall govern relations between States.
2. For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that:
  - (a) any individual enjoying the right of asylum under Article 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State party to the present Charter;
  - (b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter.

**Article 24**

All peoples shall have the right to a general satisfactory environment favorable to their development.

**Article 25**

State Parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.

**Article 26**

State Parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

**Chapter II: Duties****Article 27**

1. Every individual shall have duties towards his family and society, the State and other legally recognised communities and the international community.
2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

**Article 28**

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

**Article 29**

The individual shall also have the duty:

1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need;
2. To serve his national community by placing his physical and intellectual abilities at its service;
3. Not to compromise the security of the State whose national or resident he is;
4. To preserve and strengthen social and national solidarity, particularly when the latter is threatened;
5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defense in accordance with the law;
6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society;
7. To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well-being of society;
8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

# ANNEXURE C

## CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996: BILL OF RIGHTS

### CHAPTER 2: BILL OF RIGHTS

#### 7 Rights

(1) This 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.

(2) The state must respect, protect, promote and fulfil the rights in the Bill of Rights.

(3) The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill.

#### 8 Application

(1) The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.

(2) A provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.

(3) When applying a provision of the Bill of Rights to a natural or juristic person in terms of subsection (2), a court –

(a) in order to give effect to a right in the Bill, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right; and

(b) may develop rules of the common law to limit the right, provided that the limitation is in accordance with section 36 (1).

(4) A juristic person is entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and the nature of that juristic person.

#### 9 Equality

(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.



**10 Human dignity**

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

**11 Life**

Everyone has the right to life.

**12 Freedom and security of the person**

- (1) Everyone has the right to freedom and security of the person, which includes the right –
- (a) not to be deprived of freedom arbitrarily or without just cause;
  - (b) not to be detained without trial;
  - (c) to be free from all forms of violence from either public or private sources;
  - (d) not to be tortured in any way; and
  - (e) not to be treated or punished in a cruel, inhuman or degrading way.
- (2) Everyone has the right to bodily and psychological integrity, which includes the right –
- (a) to make decisions concerning reproduction;
  - (b) to security in and control over their body; and
  - (c) not to be subjected to medical or scientific experiments without their informed consent.

**13 Slavery, servitude and forced labour**

No one may be subjected to slavery, servitude or forced labour.

**14 Privacy**

Everyone has the right to privacy, which includes the right not to have –

- (a) their person or home searched;
- (b) their property searched;
- (c) their possessions seized; or
- (d) the privacy of their communications infringed.

**15 Freedom of religion, belief and opinion**

- (1) Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
- (2) Religious observances may be conducted at state or state-aided institutions, provided that –
- (a) those observances follow rules made by the appropriate public authorities;
  - (b) they are conducted on an equitable basis; and
  - (c) attendance at them is free and voluntary.
- (3) (a) This section does not prevent legislation recognising –
- (i) marriages concluded under any tradition, or a system of religious, personal or family law; or
  - (ii) systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.

(b) Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.

## 16 Freedom of expression

(1) Everyone has the right to freedom of expression, which includes –

- (a) freedom of the press and other media;
- (b) freedom to receive or impart information or ideas;
- (c) freedom of artistic creativity; and
- (d) academic freedom and freedom of scientific research.

(2) The right in subsection (1) does not extend to –

- (a) propaganda for war;
- (b) incitement of imminent violence; or
- (c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

## 17 Assembly, demonstration, picket and petition

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

## 18 Freedom of association

Everyone has the right to freedom of association.

## 19 Political rights

(1) Every citizen is free to make political choices, which includes the right –

- (a) to form a political party;
- (b) to participate in the activities of, or recruit members for, a political party; and
- (c) to campaign for a political party or cause.

(2) Every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution.

(3) Every adult citizen has the right –

- (a) to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and
- (b) to stand for public office and, if elected, to hold office.

## 20 Citizenship

No citizen may be deprived of citizenship.

## 21 Freedom of movement and residence

- (1) Everyone has the right to freedom of movement.
- (2) Everyone has the right to leave the Republic.
- (3) Every citizen has the right to enter, to remain in and to reside anywhere in, the Republic.
- (4) Every citizen has the right to a passport.

## 22 Freedom of trade, occupation and profession

Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.

## 23 Labour relations

- (1) Everyone has the right to fair labour practices.
- (2) Every worker has the right –
  - (a) to form and join a trade union;
  - (b) to participate in the activities and programmes of a trade union; and
  - (c) to strike.
- (3) Every employer has the right –
  - (a) to form and join an employers' organisation; and
  - (b) to participate in the activities and programmes of an employers' organisation.
- (4) Every trade union and every employers' organisation has the right –
  - (a) to determine its own administration, programmes and activities;
  - (b) to organise; and
  - (c) to form and join a federation.
- (5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36 (1).
- (6) National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter the limitation must comply with section 36 (1).

## 24 Environment

Everyone has the right –

- (a) to an environment that is not harmful to their health or well-being; and
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that –
  - (i) prevent pollution and ecological degradation;
  - (ii) promote conservation; and
  - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

## 25 Property

(1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

(2) Property may be expropriated only in terms of law of general application –

- (a) for a public purpose or in the public interest; and
- (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.

(3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including –

- (a) the current use of the property;
- (b) the history of the acquisition and use of the property;
- (c) the market value of the property;
- (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
- (e) the purpose of the expropriation.

(4) For the purposes of this section –

- (a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and
- (b) property is not limited to land.

(5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.

(6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

(7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.

(8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36 (1).

(9) Parliament must enact the legislation referred to in subsection (6).

## 26 Housing

(1) Everyone has the right to have access to adequate housing.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

(3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.



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

- (1) Everyone has the right to have access to –
  - (a) health care services, including reproductive health care;
  - (b) sufficient food and water; and
  - (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
- (3) No one may be refused emergency medical treatment.

## 28 Children

- (1) Every child has the right –
  - (a) to a name and a nationality from birth;
  - (b) to family care or parental care, or to appropriate alternative care when removed from the family environment;
  - (c) to basic nutrition, shelter, basic health care services and social services;
  - (d) to be protected from maltreatment, neglect, abuse or degradation;
  - (e) to be protected from exploitative labour practices;
  - (f) not to be required or permitted to perform work or provide services that –
    - (i) are inappropriate for a person of that child's age; or
    - (ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
  - (g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be –
    - (i) kept separately from detained persons over the age of 18 years; and
    - (ii) treated in a manner, and kept in conditions, that take account of the child's age;
  - (h) to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and
  - (i) not to be used directly in armed conflict, and to be protected in times of armed conflict.
- (2) A child's best interests are of paramount importance in every matter concerning the child.
- (3) In this section 'child' means a person under the age of 18 years.

## 29 Education

- (1) Everyone has the right –
  - (a) to a basic education, including adult basic education; and
  - (b) to further education, which the state, through reasonable measures, must make progressively available and accessible.

(2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account –

- (a) equity;
- (b) practicability; and
- (c) the need to redress the results of past racially discriminatory laws and practices.

(3) Everyone has the right to establish and maintain, at their own expense, independent educational institutions that –

- (a) do not discriminate on the basis of race;
  - (b) are registered with the state; and
  - (c) maintain standards that are not inferior to standards at comparable public educational institutions.
- (4) Subsection (3) does not preclude state subsidies for independent educational institutions.

### **30 Language and culture**

Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.

### **31 Cultural, religious and linguistic communities**

(1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community –

- (a) to enjoy their culture, practise their religion and use their language; and
- (b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.

(2) The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

### **32 Access to information**

(1) Everyone has the right of access to –

- (a) any information held by the state; and
- (b) any information that is held by another person and that is required for the exercise or protection of any rights.

(2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

### **33 Just administrative action**

(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

(2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

- (3) National legislation must be enacted to give effect to these rights, and must –
- (a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;
  - (b) impose a duty on the state to give effect to the rights in subsections (1) and (2); and
  - (c) promote an efficient administration.

### 34 Access to courts

Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

### 35 Arrested, detained and accused persons

- (1) Everyone who is arrested for allegedly committing an offence has the right –
- (a) to remain silent;
  - (b) to be informed promptly –
    - (i) of the right to remain silent; and
    - (ii) of the consequences of not remaining silent;
  - (c) not to be compelled to make any confession or admission that could be used in evidence against that person;
  - (d) to be brought before a court as soon as reasonably possible, but not later than –
    - (i) 48 hours after the arrest; or
    - (ii) the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day;
  - (e) at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and
  - (f) to be released from detention if the interests of justice permit, subject to reasonable conditions.
- (2) Everyone who is detained, including every sentenced prisoner, has the right –
- (a) to be informed promptly of the reason for being detained;
  - (b) to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;
  - (c) to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
  - (d) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
  - (e) to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and

- (f) to communicate with, and be visited by, that person's –
  - (i) spouse or partner;
  - (ii) next of kin;
  - (iii) chosen religious counsellor; and
  - (iv) chosen medical practitioner.

(3) Every accused person has a right to a fair trial, which includes the right –

- (a) to be informed of the charge with sufficient detail to answer it;
- (b) to have adequate time and facilities to prepare a defence;
- (c) to a public trial before an ordinary court;
- (d) to have their trial begin and conclude without unreasonable delay;
- (e) to be present when being tried;
- (f) to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;
- (g) to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
- (h) to be presumed innocent, to remain silent, and not to testify during the proceedings;
- (i) to adduce and challenge evidence;
- (j) not to be compelled to give self-incriminating evidence;
- (k) to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;
- (l) not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;
- (m) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
- (n) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
- (o) of appeal to, or review by, a higher court.

(4) Whenever this section requires information to be given to a person, that information must be given in a language that the person understands.

(5) Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.

### **36 Limitation of rights**

(1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including –



- (a) the nature of the right;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relation between the limitation and its purpose; and
- (e) less restrictive means to achieve the purpose.

(2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

### 37 States of emergency

(1) A state of emergency may be declared only in terms of an Act of Parliament, and only when –

- (a) the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency; and
- (b) the declaration is necessary to restore peace and order.

(2) A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, may be effective only –

- (a) prospectively; and
- (b) for no more than 21 days from the date of the declaration, unless the National Assembly resolves to extend the declaration. The Assembly may extend a declaration of a state of emergency for no more than three months at a time. The first extension of the state of emergency must be by a resolution adopted with a supporting vote of a majority of the members of the Assembly. Any subsequent extension must be by a resolution adopted with a supporting vote of at least 60 per cent of the members of the Assembly. A resolution in terms of this paragraph may be adopted only following a public debate in the Assembly.

(3) Any competent court may decide on the validity of –

- (a) a declaration of a state of emergency;
- (b) any extension of a declaration of a state of emergency; or
- (c) any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency.

(4) Any legislation enacted in consequence of a declaration of a state of emergency may derogate from the Bill of Rights only to the extent that –

- (a) the derogation is strictly required by the emergency; and
- (b) the legislation –
  - (i) is consistent with the Republic's obligations under international law applicable to states of emergency;
  - (ii) conforms to subsection (5); and
  - (iii) is published in the national *Government Gazette* as soon as reasonably possible after being enacted.

(5) No Act of Parliament that authorises a declaration of a state of emergency, and no legislation enacted or other action taken in consequence of a declaration, may permit or authorise –

- (a) indemnifying the state, or any person, in respect of any unlawful act;
- (b) any derogation from this section; or
- (c) any derogation from a section mentioned in column 1 of the Table of Non-Derogable Rights, to the extent indicated opposite that section in column 3 of the Table.

**Table of Non-Derogable Rights**

1 Section number	2 Section title	3 Extent to which the right is non-derogable
9	Equality	With respect to unfair discrimination solely on the grounds of race, colour, ethnic or social origin, sex, religion or language
10	Human dignity	Entirely
11	Life	Entirely
12	Freedom and security of the person	With respect to subsections (1) (d) and (e) and (2) (c)
13	Slavery, servitude and forced labour	With respect to slavery and servitude
28	Children	With respect to: — subsection (1) (d) and (e); — the rights in subparagraphs (i) and (ii) of subsection (1) (g); and — subsection (1) (i) in respect of children of 15 years and younger.
35	Arrested, detained and accused persons	With respect to: — subsections (1) (a), (b) and (c) and (2) (d); — the rights in paragraphs (a) to (o) of subsection (3), excluding paragraph (d); — subsection (4); and — subsection (5) with respect to the exclusion of evidence if the admission of that evidence would render the trial unfair.

(6) Whenever anyone is detained without trial in consequence of a derogation of rights resulting from a declaration of a state of emergency, the following conditions must be observed:

- (a) An adult family member or friend of the detainee must be contacted as soon as reasonably possible, and informed that the person has been detained.

- (b) A notice must be published in the national *Government Gazette* within five days of the person being detained, stating the detainee's name and place of detention and referring to the emergency measure in terms of which that person has been detained.
- (c) The detainee must be allowed to choose, and be visited at any reasonable time by, a medical practitioner.
- (d) The detainee must be allowed to choose, and be visited at any reasonable time by, a legal representative.
- (e) A court must review the detention as soon as reasonably possible, but no later than 10 days after the date the person was detained, and the court must release the detainee unless it is necessary to continue the detention to restore peace and order.
- (f) A detainee who is not released in terms of a review under paragraph (e), or who is not released in terms of a review under this paragraph, may apply to a court for a further review of the detention at any time after 10 days have passed since the previous review, and the court must release the detainee unless it is still necessary to continue the detention to restore peace and order.
- (g) The detainee must be allowed to appear in person before any court considering the detention, to be represented by a legal practitioner at those hearings, and to make representations against continued detention.
- (h) The state must present written reasons to the court to justify the continued detention of the detainee, and must give a copy of those reasons to the detainee at least two days before the court reviews the detention.

(7) If a court releases a detainee, that person may not be detained again on the same grounds unless the state first shows a court good cause for re-detaining that person.

(8) Subsections (6) and (7) do not apply to persons who are not South African citizens and who are detained in consequence of an international armed conflict. Instead, the state must comply with the standards binding on the Republic under international humanitarian law in respect of the detention of such persons.

### 38 Enforcement of rights

Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are –

- (a) anyone acting in their own interest;
- (b) anyone acting on behalf of another person who cannot act in their own name;
- (c) anyone acting as a member of, or in the interest of, a group or class of persons;
- (d) anyone acting in the public interest; and
- (e) an association acting in the interest of its members.

### 39 Interpretation of Bill of Rights

(1) When interpreting the Bill of Rights, a court, tribunal or forum –

- (a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;

(b) must consider international law; and

(c) may consider foreign law.

(2) When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.

(3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill.



# ANNEXURE D

## CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996: BILL OF RIGHTS (Abbreviated)

- 1 Section 9: Right to equality
- 2 Section 10: Right to human dignity
- 3 Section 11: Right to life
- 4 Section 12: Right to freedom and security of the person
- 5 Section 13: Right to freedom from slavery, servitude and forced labour
- 6 Section 14: Right to privacy
- 7 Section 15: Right to freedom of religion, belief and opinion
- 8 Section 16: Right to freedom of expression
- 9 Section 17: Right to freedom of assembly, demonstration, picket and petition
- 10 Section 18: Right to freedom of association
- 11 Section 19: Right to participate in political life and to vote
- 12 Section 20: Right not to be deprived of citizenship
- 13 Section 21: Right to freedom of movement and residence
- 14 Section 22: Right to freedom of trade, occupation and profession
- 15 Section 23: Right to fair labour practices and relations
- 16 Section 24: Right to non-harmful and protected environment
- 17 Section 25: Right not to be arbitrarily deprived of property
- 18 Section 26: Right of access to housing
- 19 Section 27: Right of access to health care, food, water and social security
- 20 Section 28: Rights for the protection of children
- 21 Section 29: Right to education
- 22 Section 30: Right to language and culture
- 23 Section 31: Right to enjoy cultural, religious and linguistic practices
- 24 Section 32: Right of access to information
- 25 Section 33: Right to just administrative action
- 26 Section 34: Right of access to the courts
- 27 Section 35: Rights for the protection of arrested, detained and accused persons
- 28 Section 36: Limitation of rights

# **ANNEXURE E**

## **ELECTORAL CODE OF CONDUCT**

### **Schedule 2 to the Electoral Act 73 of 1998**

#### **1 Purpose of Code**

The purpose of this Code is to promote conditions that are conducive to free and fair elections, including

- (a) tolerance of democratic political activity; and
- (b) free political campaigning and open public debate.

#### **2 Promotion of Code**

Every registered party and every candidate bound by this Code must—

- (a) promote the purpose of the Code when conducting an election;
- (b) publicise the Code widely in any election campaigns; and
- (c) promote and support efforts in terms of this Act to educate voters.

#### **3 Compliance with Code and electoral laws**

Every registered party and every candidate must

- (a) comply with this Code;
- (b) instruct—
  - (i) in the case of a party, its candidates, persons who hold political office in the party, and its representatives, members and supporters, to comply with this Code and any applicable electoral laws; or
  - (ii) in the case of a candidate, the representatives and supporters of the candidate to comply with this Code and any applicable electoral laws;
- (c) take all reasonable steps to ensure
  - (i) in the case of a party, that its candidates, persons who hold political office in the party, and its representatives, members and supporters, comply with this Code and any applicable electoral laws; or
  - (ii) in the case of a candidate, that the representatives and supporters of the candidate comply with this Code and any applicable electoral laws.

#### **4 Public commitment**

(1) Every registered party and every candidate must—

- (a) publicly state that everyone has the right—
  - (i) to freely express their political beliefs and opinions;
  - (ii) to challenge and debate the political beliefs and opinions of others;

- (iii) to publish and distribute election and campaign materials, including notices and advertisements;
  - (iv) to lawfully erect banners, billboards, placards and posters;
  - (v) to canvass support for a party or candidate;
  - (vi) to recruit members for a party;
  - (vii) to hold public meetings; and
  - (viii) to travel to and attend public meetings; and
- (b) publicly condemn any action that may undermine the free and fair conduct of elections.
- (2) Every registered party and every candidate must accept the result of an election or challenge the result in a court.

### **5 Duty to co-operate**

Every registered party and every candidate must liaise with other parties contesting an election and endeavour to ensure that they do not call a public meeting, march, demonstration, rally or any other public political event at the same time and place as that called by another party contesting the election.

### **6 Role of women**

Every registered party and every candidate must—

- (a) respect the right of women to communicate freely with parties and candidates;
- (b) facilitate the full and equal participation of women in political activities;
- (c) ensure the free access of women to all public political meetings, marches, demonstrations, rallies and other public political events; and
- (d) take all reasonable steps to ensure that women are free to engage in any political activities.

### **7 Role of Commission**

Every registered party and every candidate must—

- (a) recognise the authority of the Commission in the conduct of an election;
- (b) assure voters of the Commission's impartiality;
- (c) give effect to any lawful direction, instruction or order of the Commission, or a member, employee or officer of the Commission, or the chief electoral officer;
- (d) establish and maintain effective lines of communication with
  - (i) the Commission; and
  - (ii) other registered parties contesting the election;
- (e) facilitate the access of members, employees and officers of the Commission, and the chief electoral officer, to public meetings, marches, demonstrations, rallies and other public political events of that party or candidate;
- (f) co-operate in any investigation of the Commission;
- (g) take all reasonable steps to ensure

- (i) the safety of members, employees and officers of the Commission, and the chief electoral officer, in the exercise of any power or the performance of any duty assigned by or under this Act;
- (ii) that persons referred to in subparagraph (i) are not subjected to insult, hazard or threat by any representatives or supporters of that party or candidate; and
- (iii) that representatives of that party or candidate attend meetings of any party liaison committee or other forum convened by the Commission.

## 8 Role of media

Every registered party and every candidate

- (a) must respect the role of the media before, during and after an election conducted in terms of this Act;
- (b) may not prevent access by members of the media to public political meetings, marches, demonstrations and rallies; and
- (c) must take all reasonable steps to ensure that journalists are not subjected to harassment, intimidation, hazard, threat or physical assault by any of their representatives or supporters.

## 9 Prohibited conduct

(1) No registered party or candidate may

- (a) use language or act in a way that may provoke
  - (i) violence during an election; or
  - (ii) the intimidation of candidates, members of parties, representatives or supporters of parties or candidates, or voters;
- (b) publish false or defamatory allegations in connection with an election in respect of
  - (i) a party, its candidates, representatives or members; or
  - (ii) a candidate or that candidate's representatives;
- (c) plagiarise the symbols, colours or acronyms of other registered parties; or
- (d) discriminate on the grounds of race, ethnicity, sex, gender, class or religion in connection with an election or political activity.

(2) No person may

- (a) offer any inducement or reward to another person
  - (i) to join or not to join a party;
  - (ii) to attend or not to attend a public meeting, march, demonstration, rally or other public political event;
  - (iii) to vote or not to vote, or to vote or not to vote in any particular way; or
  - (iv) to refuse a nomination as a candidate or to withdraw as a candidate; or



- (b) carry or display arms or weapons
  - (i) at a political meeting; or
  - (ii) in any march, demonstration, rally or other public political event;
- (c) unreasonably prevent any other person access to voters for the purpose of voter education, collecting signatures, recruiting members, raising funds or canvassing support for a party or candidate;
- (d) deface or unlawfully remove or destroy the billboards, placards, posters or any other election materials of a party or candidate; or
- (e) abuse a position of power, privilege or influence, including parental, patriarchal, traditional or employment authority to influence the conduct or outcome of an election.

### **10 Additions to Code**

The Commission may by regulations made in terms of section 100 add provisions to this Code.

