

Constitution of the Republic of South Africa, 1996 including the Bill of Rights

Topic: Equality and Rights

IN A CALABASH

Introduction

The Constitution is the highest law in the country and everyone will be bound by it.

The Constitution states that the three spheres of government, namely National Government, Provincial Government and Local Government, are distinctive, inter-related and inter-dependent. All three spheres of government have the responsibility to make policies and laws about the rights and responsibilities of citizens and the delivery of government services. At the same time, all three spheres of Government operate according to the Constitution.

Objectives of the Act

The Constitution sets out the rights of South African citizens, in particular those housed under the Bill of Rights, and how government is to go about giving effect to these rights. Our government is made up of National, Provincial and local spheres which are distinctive, inter-dependent and inter-related. All three spheres of government must adhere to the principles under the Constitution and conduct their activities within the parameters as set out therein. These include the principles of co-operative governance and inter-governmental relations.

In terms of the Constitution the national government has the power to pass legislation which will give effect to the rights under the Constitution. The reader, however, must note that the National Government has concurrent legislative competence with the provincial government in respect of laws pertaining to Tourism. Furthermore, National Government does not have any competence to make any laws pertaining to museums, provincial cultural matters, accommodation or recreation as these competencies are exclusively in the domain of provincial government.

In terms of laws pertaining to Tourism, both national and provincial government must ensure that any laws made are in harmony with the principles as set out under the Constitution.

Any laws that go against the Constitution or the Bill of Rights will be viewed as being of no force and effect and will be set aside by the Constitutional Court, which is the highest Court of the land.

Application of the Act and its implication to Tourism

The Constitution, including the Bill of Rights, applies to all South African citizens and all three spheres of Government.

In relation to the Tourism Industry, all stakeholders and all persons who operate within this industry need to be mindful of the various rights which are set out under the constitution. In particular, those pertaining to discrimination, right of access, freedom of expression, the right to carry on a business and the rights of access to information.

Finally, in the context of tourism, all role players within the industry must not lose sight of the right that all South Africans have to an environment which is safe, healthy, free from pollution and protected for future generations.

Summary of the provisions of the Act

All South Africans have the right to South African citizenship and the right to hold a South African Passport.

South African citizens are encouraged to use, where applicable and appropriate, not only the 11 official languages but also the Khoi, Nama and San languages and sign language throughout South Africa.

Every SA citizen is equal before the law and has the right to equal protection and benefit of the law. Everyone is entitled to equal rights and freedoms and the right to have the same opportunities and to have equal access to resources.

Every SA citizen has the right not to be discriminated against on the basis of–

- race and colour;
- sexual orientation: being gay, lesbian or heterosexual;
- marital status: being single, married or divorced;
- gender: social and cultural male or female roles (for example, where a woman cannot get a certain job just because she is a woman);
- sex: physical differences between men and women (for example, a woman is discriminated against because she is pregnant);
- pregnancy;
- age;
- disability;
- ethnic origin: being from a particular background, such as a clan or language group;
- culture: having a shared culture and traditional practices;
- language;
- religion, conscience and belief; or
- birth.

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

Everyone has the right to life which should not be threatened or reduced in any manner.

All South African citizens have the right to freedom and the right to make their own choices, which includes the right–

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

Furthermore, everyone has the right to be free from all forms of violence, including the right to be protected from domestic violence, violent forms of punishment and corporal punishment.

No form of slavery or forced labour is allowed. This right is entrenched in our labour laws which prohibit all forms of slavery and forced labour.

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

- be body-searched without one's permission or under a court order;
- have one's home searched without a court order;
- have one's things taken from one; or
- have one's personal information, such as letters or electronic communications, opened and read or one's telephoned tapped.

Everyone has the right to believe or think what he or she wants and to express his or her own opinions or views so long as doing so does not lead to any aggressive behaviour or incite or encourage violence.

Furthermore, everyone has the right to freely and without sanction practise the religion they choose.

Everyone has the right to say or express, verbally or otherwise, what he or she feels. However, where any expression uttered by any person amounts to any propaganda for war, incites or encourages people to use violence or leads to hate speech, such activity is prohibited.

In line with the right to freely express one's feelings and opinion, everyone has the right to assemble with other people, to hold a demonstration, to picket or to present petitions, subject to any applicable laws which regulate how such activity may proceed and take place. Any such activity must be conducted in a peaceful and non-violent manner.

Everyone has the right to associate with whomever they want. This includes the right to join a club, trade union or workers' organisation, subject to any applicable laws which regulate how such activity may proceed and take place.

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

- form a political party;
- join any political party;
- encourage other people to join a political party; and
- campaign for a political party or cause.

Every adult citizen has the right to participate in free, fair and regular elections, including the right to–

- vote in these elections;
- vote in secret in elections; and
- stand for election.

Everyone has the right to move anywhere in South Africa or to leave South Africa if they choose.

Every person has the right to choose his or her trade, occupation or profession freely. That being said, laws can and have been passed to regulate how people practise their trade, occupation or profession.

Everyone has the right to fair and equitable labour practices.

Everyone has the right to an environment that is not harmful to their health or well-being and which is protected for present and future generations.

No one can have their property taken away from them unless this is done according to a law. No one is allowed to unlawfully access any lawful owner's property without permission.

Whilst all people in terms of the Constitution have a right to adequate housing, this is subject to the available resources which have been allocated by the South African Government. In this regard no one can be unlawfully evicted from their home or have their home demolished.

Everyone has the right to access information, which is held by both the private and public where such person can show that they have a legitimate right to such information.

All South Africans have the right to just administrative action. Before any law or decision is taken which may impact on and negatively affect a person's right, the relevant Government official or department must give that person a copy of the law or decision and an opportunity to make comments and discuss the matter before it is finalised.

Everyone has an equal right of access to the courts and legal system in South Africa.



WHAT HAPPENS IF YOU DO NOT COMPLY?

When a person's right under the Constitution has been infringed or violated, such person will have the right to approach the Constitutional Court with his or her complaint.



RECOMMENDED ACTIONS OR CONTROLS WHICH SHOULD BE IMPLEMENTED BY THE TARGET AUDIENCE TO ENSURE COMPLIANCE WITH THE ACT

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FURTHER INFORMATION

Regulator

The Constitutional Court

Website

www.constitutionalcourt.org.za/site/home.htm