



CLASI

Constitutional Literacy
& Service Initiative

SCHOOLS Teaching MANUAL

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LESSON 1

Introduction to Constitution

Name: _____ School: _____ Prepared By: _____

Overview & Purpose	Education Standards Addressed

	TEACHER GUIDE	PUPIL GUIDE	
Objectives			Materials Needed <ul style="list-style-type: none">• None
Information			
Verification			Other Resources <ul style="list-style-type: none">• None
Activity			

Comments for TEACHING Fellows:

During every single lesson you need to make a conscious effort to engage with the material in a way that the learners are able to relate to, so that they can see how the Constitution is relevant to their everyday lives. You must feel free to be creative and work with the learners in an interactive way.

Introduction:

Provide learners with introduction to CLASI and to yourselves as Teaching Fellows. Also discuss the importance of constitutional literacy and human rights education.

Explain key terms:

- Democracy
- Constitution
- Law



GROUP ACTIVITY

Exercise 1:

Show learners a photo of protests in the Democratic Republic of Congo (article at end of this lesson) and South Africa pre-1994 (below is picture of a student demonstration in Cape Town following the Soweto Uprising in 1976) and use that as an entry point into the SA Constitution. Ask them where the photo is taken. Why are people protesting? Fighting for democracy and constitutionalism. What are these things? Discuss. These protests also occurred here in South Africa, and the result is that since 1994, we actually have a democracy and a new constitution. We have something others are still fighting for. That's what this class is going to be about: to discuss what we won after a long fight and how to make it a reality, not words on paper.





GROUP ACTIVITY

Exercise 2:

Ask six learners from the class to come forward as volunteers. Divide them into two groups. Ask one group to act out how they would describe a democracy and the other group to act out how they would describe a dictatorship. You can give the learners about 3 minutes to do this.

What does Democracy mean to you?

[Try to generate discussion before providing a response. Response should come from learners themselves]

Democracy means that everyone has a say about how the country is run. In a democracy, the government is put into power by its' citizens. The adult citizens of a democratic country elect their government. One way they do this is by choosing people to represent them in a parliament. In a multi-party system, the party that gets the most votes (the majority) governs the country.

How many of you know about the South African Constitution? What do you know about it? What is a constitution?

A constitution of a country is a document that sets out:

- the social values that the country believes in
- the structures of government
- what powers and authority a government and government bodies have
- the rights of citizens
- the relationship between government and citizens
- aspects of the relationships between citizens
- blueprint for what we want for the future of our country, our hopes

A constitution is the highest law in the land and it must be respected by all government bodies. It is higher than any parliament and it can override any law that parliament makes if the law goes against the constitution. No law can go against the constitution, whether it is a customary law or a law that parliament makes.

The South African Constitution of 1996 is a document that consists of 14 chapters. It says how the government should govern the country and it has a Bill of Rights that protects the human rights of all citizens. It also provides ordinary people, like you and me, who live in South Africa with a lot of information to make sure the government is doing what we have voted it into power to do. The Constitution has been referred to as the “birth certificate” of a new South Africa.

Which brings me to my next question: what is law?

A set of rules used to control the behaviour of people in society. These rules tell people what they must do, what they may do, and what they may not do. In other words, they tell people about their legal “rights” and “duties.” We’ll talk more about where laws come from, whether they can be changed, whether they are fair, but for now we need to understand that laws affect each of us every day.

Let’s take a look:



GROUP ACTIVITY (15 minutes)

Exercise 3:

Make a list of your daily activities (e.g. washing up, eating, going to school). Next to each activity state whether you think there are any laws affecting it. What do you think is the purpose of these laws? Would you change any of these laws? Why or why not?

Comments for TEACHING Fellows:

Draw a table, listing the activity, whether the learner is affected by the law and how, why the law exists, and if the law should be changed. An example: take bath; yes, public health laws say water must be clean, and no, this should not be changed because dirty water could cause disease.

Law is binding on people. That means rules must be followed in order to maintain order and prevent chaos. If a law is not followed, a person may be punished or made to pay a fine or do other things. But it does not mean that a law must be fair or just to be a law. In the past, South Africa's apartheid laws, which we'll hear about more next week, forced people of different races to live in different areas and live under different laws.

So now you see that a constitution is one source of law. There are other sources, or kinds, of law as well, which we'll discuss later on. In South Africa, though, the Constitution is the highest law in the country. So now, we're going to be together once a week for a while, and we'll have to work together, so let's establish our own class constitution.



GROUP ACTIVITY

(15 minutes)

Exercise 4:

Create a Class Constitution. Break learners into small groups and determine 5 values / freedoms that are important for the class to strive towards (for example, tolerance of each other's views, not interrupting another person, etc.). Have small groups report back to larger class, and then agree on a class constitution. Record on flip chart, get everyone – including teacher and Teaching Fellows – to sign it as an indication of their personal commitment for the duration of the class. Also ask the teacher if it is possible to display the Class Constitution somewhere in the class where all the learners can see it.

Why is it important to write down your class constitution?

- Need to have agreement on a shared set of values from which clear and consistent rules are established for everyone as they embark on a collective endeavor.
- Everyone needs to be included in the process and to be treated equally to make the resulting document legitimate.
- Rules must be set forth beforehand; they cannot be changed in the middle of a process.

Next week we will discuss where the Constitution in South Africa comes from, what existed before, and what exists now. We will discuss the concept of TRANSFORMATION.

Wrap-Up:

Vocabulary:

Comments for TEACHING Fellows:

As an introduction to the concept of Transformation in the next class, Teaching Fellows may want to assign each learner as homework the task of writing his/her family history in 2 pages or less. TEACHING FELLOWS SHOULD ALSO DO THIS HOMEWORK.

In those histories, they could explore:

- 1) Where does your family originate from? How far back can you trace your ancestors?
- 2) Which of your family members lived through apartheid? Pick two.
- 3) Ask them: what was life like under apartheid?
- 4) Ask them: did their life change after apartheid? How?
- 5) Has your life been similar to or different than what life was like under apartheid? Give some examples.

CASE STUDY

ARTICLE ON SITUATION IN THE DRC:

Very real risk of violence' looms over DR Congo elections, senior UN official warns

Special representative for the Democratic Republic of the Congo (DRC), Maman S. Sidikou (on screen), addresses the Security Council by video conference. UN Photo/Evan Schneider.

14 January 2016 – The Democratic Republic of Congo (DRC) faces “very real risks of unrest and violence” over elections later this year while confronting a “significant deterioration” of security in its war-torn eastern provinces, the top United Nations official in the country warned today.

“Presidential and legislative elections scheduled for November of this year are a deeply divisive issue, particularly given the continued absence of an agreed electoral calendar or a budget for the elections,” Secretary-General Ban Ki-moon’s Special representative for DRC Maman S. Sidikou told the Security Council.

Addressing the Council by video conference from the DRC, he noted that formal preparations for a National Dialogue announced by President Joseph Kabila to forge consensus on the process have not yet begun, in part due to strong opposition by many major opposition groups.

“In the absence of agreement on the electoral process, political polarization has heightened tensions and contributed to an atmosphere of increased harassment and human rights violations,” he said, with the UN Organization Stabilization Mission in DRC (MONUSCO) registering over 260 election-related human rights violations, mostly against opposition members, civil society and journalists since last year.

“This, combined with a rising number of human rights abuses by armed groups in eastern DRC, demonstrates a worrying trend of narrowing political space and a real challenge to the conduct of peaceful credible elections,” he added.

“Given the very real risks of civil unrest and violence related to the electoral process, it is critical that all efforts be made to rebuild confidence among the stakeholders to find a way forward,” he said.

On a positive note on another longstanding human rights concern, Mr. Sidikou highlighted significant steps by the Congolese authorities, including 20 trials in the past three months which found 19 army officers guilty of rape.

Turning to the security situation, where “there has been a significant deterioration in the eastern part of the country in recent weeks,” Mr. Sidikou cited the Beni and Lubero areas of North Kivu Province where the Allied Defence Forces (ADF) and the Force Democratiques pour la Liberation de Rwanda (FDLR) pose ongoing and serious threats to the civilian populations.

In Beni, despite two years of operations against it, the ADF remains able to coordinate simultaneous attacks on the army and MONUSCO, with over 500 civilians killed since 2014, and tens of thousands of others displaced.

SUMMARY



Democracy is a system of government in which citizens control their government, usually through electing representatives. In our multi-party system, the party that gets the most votes (the majority) governs the country. Democracy means that everyone has a say about how the country is run, but to do that, it requires people to be active citizens.

Law is a set of rules used to control the behaviour of people in society. It tells people about their legal “rights” and “duties.” But a law does not have to be fair or just to be a law. In the past, South Africa’s apartheid laws forced people of different races to live in different areas and under different laws. When laws are unjust there are ways to respond and change the law.

The **Constitution** is the highest law in the land and it must be respected by all government bodies. It contains:

- the social values that the country believes in
- the structures of government
- what powers a government and government bodies have
- the rights of citizens
- the relationship between government and citizens
- aspects of the relationships between citizens
- blueprint for what we want for the future of our country – our hopes

The South African Constitution of 1996 says how the government should rule the country and it has a Bill of Rights that protects the human rights of all citizens. It is the “birth certificate” of the new South Africa.

LESSON 2

Transformation

Name: _____ School: _____ Prepared By: _____

Overview & Purpose	Education Standards Addressed

	TEACHER GUIDE	PUPIL GUIDE	
Objectives			Materials Needed <ul style="list-style-type: none">• None
Information			
Verification			Other Resources <ul style="list-style-type: none">• None
Activity			

Last week we discussed the concepts of democracy, a constitution, and law. We asked you to write a short essay on your family history. Today we will look at those essays as a basis to discuss the concept of TRANSFORMATION.

Comments for TEACHING Fellows:

Ask for 3 learners to volunteer to share their family histories. To encourage them to do this, one of the Teaching Fellows should start with his/her own family history. If the learners are still hesitant, emphasise again that fundamentally, transformation is an experience that is very personal and there can be no right or wrong. Or, consider rewarding volunteers in some way! 😊 Between essays, stimulate discussion amongst learners by asking some provocative questions. Transition to discussion about transformation.

What is Transformation?

Changing institutions and their structures, systems and processes in post-apartheid South Africa, by redressing the historical inequalities that were built into institutions under apartheid and promoting the commitment of institutions to a new social order. But transformation is not just *out there* for government to do, it is a personal process for each of us as well.

South Africa has a long history of racial discrimination. For hundreds of years, the black majority of the country was deprived of basic rights while a white minority enjoyed many rights and privilege and power. In order to appreciate what we have inherited today, we must take a look at where we have come from.

1510:

Battle of Gorinhaiqua, during which Portuguese militarist Francisco D'Almeida and all his men were conquered in a conflict with the Cape Khoi, one of the indigenous peoples of South Africa.

1652:

Commissioned by the Dutch East India Trading company, the merchant Jan van Riebeeck, with 82 men and 8 women, one of them his wife, established the European settlement in South Africa at Cape Town.

1658:

First political prisoner exiled to Robben Island. He was a Khoikhoi interpreter named Autshumato, simply because he was taking back cattle the people believed to have been unfairly confiscated by European settlers.

1845–1869:

Earliest manuscripts of the Afrikaans language recorded, written in Arabic script by Islamic scholars. Revealed multiple influences on Afrikaans, including Nama and Malay influences.

1899–1902:

Second Boer War fought between British and Dutch settlers (both were colonial powers); British created “concentration camps” for Boers and black Africans in which tens of thousands of people died. Ended with British victory.

1910:

Britain decided to withdraw from the government of South Africa and handed the country over to the white residents of South Africa. These people were the British settlers and the Boers. South Africa became a Union, which meant that it could govern itself but remained under strong control of the British Empire, and adopted its first constitution. This gave rights to the white minority but took away the right to vote of the majority of South Africans.

1936:

Black South Africans were removed completely from the voters’ roll, meaning they could not vote at all.

1948:

After the end of the Second World War, the Universal Declaration of Human Rights was adopted by the United Nations, declaring certain rights to be universally held by all people. In South Africa, the National Party, the party supported by the Afrikaners, took control and started a policy that came to be known as apartheid.

1949–1952:

Series of apartheid laws passed, including laws that made it a crime for people of different races to live in the same areas, that forcibly removed non-white South Africans from District Six near town and pushed them to live in the Cape

Flats, that took away the right to vote for Coloured people, that prohibited people of different races from marrying, that required all black people to carry pass books that identified them at all times, and that removed rural black areas from the Republic of South Africa and made them separate “homelands.”

1955:

As the struggle for freedom reached a new intensity, the idea of a Freedom Charter was born, and the Congress of the People Campaign was initiated. During this campaign the ANC and its allies invited the whole of South Africa to record their demands so that they could be incorporated in a common document. Thousands of people participated in the campaign and sent in their demands for the kind of South Africa they wished to live in. The campaign for the Congress of the People and the Freedom Charter united most of the liberation forces in South Africa.

1961:

The white government declared South Africa a Republic and the government adopted the second Constitution that took away the rights of black people.

1983:

The South African government adopted the third Constitution, which created a separate parliament for the White, Coloured and Indian groups. This Constitution excluded black people and automatically made them citizens of the homeland where they were born. They had no rights outside these homelands.

1990:

Nelson Mandela was released from Robben Island. The apartheid government started negotiating with the ANC and other liberation movements.

1994:

Twenty-six parties negotiated and adopted an interim Constitution, that gave the vote to everyone. This Constitution lasted for two years. During that time the elected government worked as the Constitutional Assembly and had to draw up a final Constitution. Democratic elections were held in which all South Africans could vote.

1996:

A final constitution was negotiated and accepted by the Constitutional Court.

2014:

Next general election will occur, in which a new National assembly and provincial legislatures will be elected.

Nelson Mandela – “Madiba”

ANC President and first president of democratic SA; operated first allblack law firm in SA; Nobel Peace Prize winner; imprisoned for 27 years on Robben Island for treasonous plans of ANC and MK.

Oliver Tambo

President of the ANC from 1967–1991; spent over 30 years in exile running the banned ANC from outside the country and attempted to get international support for resistance.

Helen Suzman

For many years, only person in Parliament who was absolutely opposed to apartheid; in Parliament for 36 years

Steve Biko

A student leader who founded the Black Consciousness Movement which empowered and mobilized much of the urban black population. He used the slogan “black is beautiful”, and died in police custody.

Yvonne Mokgoro

First black female judge on the Constitutional Court. Originally from Kimberley who worked first as a nursing assistant and a salesperson. She was encouraged to study law by Robert Sobukwe, an anti-apartheid lawyer.

Ayesha “Bibi” Dawood

Muslim woman from Worcester in the Western Cape who started hating apartheid laws from reading the newspaper with her father. She was critical to the Defiance Campaign, a movement to defy the apartheid-era laws. Put on trial charged with treason in 1956. Later sent into exile in India for 22 years, returned to SA after Mandela was released.

Ashley Kriel

Cape Town student leader from Bonteheuwel who was shot dead by security police after they tracked him to a house where he was in hiding in 1987. He died shortly before his 21st birthday.

So now we have examined some of the significant time periods and people in SA history that brought about a transformation of the legal, social and political system. Let's take a look at what it must have felt like to live through these different periods.

Group 1 – Bantu Education

The apartheid government saw education as a key element in their plan to create a completely segregated society. The Minister of Education at the time, Henrik Verwoerd, stated that there was no place for Bantus (Africans) in the European community except for certain forms of labour. The Bantu Education Act of 1953 was a law that enforced separation of races in all educational institutions. Even universities were segregated according to race. The policy of Bantu education was aimed to push black or non-white youth into the unskilled labour market.



GROUP ACTIVITY

Exercise 1:

Role Play Exercise: Give learners cards with different colours, representing the period of history they must re-enact. Each group is designated to a different area of the room, and given a brief of their historical period and what their role play entails. The groups should not know what the others are working on. Group 1: Bantu Education, Group 2: Soweto Uprising 1976, Group 3: Education for All. Each learner will be required to read a paragraph from the brief, and together discuss. The learners will organize a miniplay to be performed to the entire group about their period. Afterwards, debrief with group discussion.

Bantu education led to a huge reduction of government aid to black learning institutions. Black teachers salaries in 1953 were extremely low and resulted in the number of teachers who were trained to drop. Only one third of black teachers were qualified.

The schools reserved for the country's white children were of high quality standards and the education was both mandatory and free. 30% of the black schools did not have electricity, 25% running water, and less than half had plumbing. The education for non-white youth was not free.

In the 1970s, the government spent R1 for every black child out of every R10 spent on a white child. Black parents in Soweto paid R102 a year to send two children to school, had to buy textbooks, and had to contribute towards the cost of building schools.

Group 2 – Soweto Uprising

In 1976, student protests against the Afrikaans Medium Decree of 1974 which forced all black schools to use Afrikaans and English led to the Soweto uprising in which more than 575 people died, at least 134 of them under the age of 18.

When the 1976 school year started, many teachers refused to teach in Afrikaans. In June, students from Orlando West Junior Primary School staged a classroom boycott, joined by students from 7 other schools in Soweto. The Department of Bantu Education sent the police in. At Naledi High School, students demanded to speak to the regional director of education. The government sent the Special Branch in, and the students overturned their police vehicles.

A students meeting was held on 13 June for 400 students in which they decided to stage a mass demonstration against the use of Afrikaans on the 16 of June. They made a pact not to get their parents involved, thinking they would stop it. On 16 June, students assembled at different points in Soweto and all together, it was said about 15,000–20,000 students marched in school uniform.

The students caught the Bureau of State Security off guard. When students refused to disperse, police dogs were released and teargas was fired. Students threw stones and bottles at the police. Policemen started shooting into the crowd. Students started setting fire to symbols of apartheid. Anti-riot vehicles arrived and army helicopters dropped teargas on the students. Roadblocks were set up into all entrances of Soweto.

13-year old Hector Petersen was shot in that famous picture you have seen. The first shot had been fired by the police before the students started throwing stones. Many people died and more were injured. After three days of rioting, the Minister of Bantu Education closed all schools in Soweto.

The rioting spread all over the country. Cape Town schools joined in the protest, with high schools like Alexander Sinton, Langa, Belgravia, Modderdam, Bonteheuwel, and others, actively participating. Coloured and Indian students joined their black comrades. Students stood together and vented their frustrations, no matter the consequence. Violence flared throughout 1976. A new generation had made their voice of opposition to apartheid heard, and were determined to be listened to. June 16th would never be forgotten.

Group 3 – Today’s Student Movement for Education

#FeesMustFall is just the start of change (Vuyisile Msila, Mail & Guardian, 21 January 2016)

...

When students stood up this year, they were demonstrating the frustration of parents who are battling to make ends meet after sending them to university. More than two decades after the fall of apartheid, the poor still struggle to send their children to higher education institutions. It is sad to find that only the rich will be able to educate their children because it has always been the hope of parents like Zungu that their children may be able to lift themselves out of the cycle of poverty. The Fees Must Fall campaign’s ideals have always been in parents’ prayers and wishes, for higher education has become a goal so difficult to reach. It was a campaign that the higher education department and government had to do something about. We also need to think about the bigger questions that society asked during the campaign.

Just before it, there was what appeared to have been the mother of the campaigns in 2015 – the Rhodes Must Fall campaign, which raised uncomfortable questions for many members of society. The symbolism of Rhodes and all other imperialists and oppressors were questioned. Various institutions and our cities have reflected colonial history and, unfortunately, after 1994, there were never fully fledged debates about its symbols. This may be the reason even street-name changes are frequently contentious.

As a society, we need to think deeply when we debate these meaningfully. It sounded trivial to some, but the imperial nature of the curriculums in our

institutions may be linked to the symbols that reign on campuses. But I am certain that many would not support the arbitrary nature in which this was approached in some cases.

An even more worrying factor is that, after the fall of Rhodes, we kept quiet and stopped talking about the future of colonial symbols. This is wrong. It is important not only for higher education but also for society and the country at large.

We also need to talk about what should happen to these statues, for I would disagree that they should be destroyed. We have a history to tell to our children's children. We need the melancholy story of oppression and the sweet accounts of freedom.

But we have not started to debate the criteria we need to use in removing these symbols. The Cape Town students questioned the colonial effigy of Rhodes, which had stood sentinel over Cape Town for decades, and helped society to look at the bigger questions. These were not only about transforming the institutions of higher learning but also the larger society. Indeed, this was clearly a demonstration that education and social issues are intertwined.

The Rhodes Must Fall campaign also resuscitated the debate about why we need to Africanise the institutions of higher learning. Many commentators looked seriously at the need to ensure that higher education institutions in Africa should reflect the African milieu. It has always been argued that, when our African students complete their education, they tend to know more about Europe than Africa. The transformation in higher education should go beyond the name change of the institution's buildings and the mere hiring of more black staff. We need to go further by ensuring that faculties embrace the indigenisation of knowledge. Before we step into the global world and contest as intellectuals, we need to understand our space as well. In building a strong Africa, we need to build links between African states, connections that would make sure we understand what it means to be Africans in Africa.

...

The most poignant of all the transformation debates was the exposé of the Luister video, which exhibited the deep suffering of black students in an Afrikaner institution. Certainly, if Stellenbosch fails to transform after this video, one cannot know what would touch the council and the community of this institution, and those of similar ones.

Institutions that fail to address social challenges and continue to perpetuate bigotry and racism are a danger to the country. Coming from our apartheid past should make institutions wary of reproducing the ills of society, either consciously or unconsciously.

The Luister students demonstrated how their institution needs to change the embedded culture. Black students continue to be treated as “the other” in their own land.

The case at Stellenbosch also revealed how social biases in education can defeat the optimism that education potentially has. The Luister episode emphasised the need to look at aspects such as the language, culture and philosophy that universities employ.

...

The year 2015 will go down in history as a year second only to 1976 in the way students have shown their muscle in trying to alter the direction of the wheel of history.

Students gained so many pockets of success in their Fees Must Fall campaign, but now the struggle should deepen to gain even more wins, which would include committed students, conscientious lecturers and clear-headed, sympathetic management. The successes of both the Rhodes Must Fall and Fees Must Fall campaigns will be recorded as part of the movement to change the institutions of higher learning in South Africa.

But we are interested in much deeper transformation that would better the country for, as a fledgling democracy, we continue to think of education as a public good.

It was people as thoughtful as Zungu who stood at the Congress of the People in Kliptown to declare “the doors of learning and culture should be opened for all”. No doubt, the students postulate that that time has arrived.

Discussion:

- 1) What it was like for members of each group to re-enact your specific period of history? What was challenging?
- 2) What did you learn from the other groups' plays?
- 3) How has the law changed over time regarding education? What has remained the same?
- 4) Are laws always fair?
- 5) What do you do when the law is unfair?
- 6) Can you think of any rights about any of these issues that are now in the Constitution?
 - a. *Discuss right to education briefly – will come back to it later in course. Read text of provision together.*
 - b. *Important to remember the power of ordinary learners and students to fight for their rights.*
 - c. *But things are still not at the point where education is equal for all. We must build towards that.*

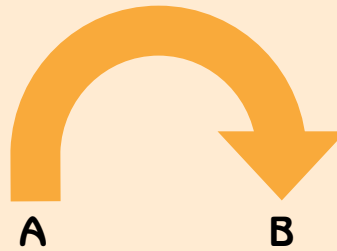
Comments for TEACHING Fellows:

Consider this homework assignment for next class as an introduction:

In your community, where do you go if you feel your rights have been violated? Is there a court, or a government office you can go to lodge a complaint? Ask your family member, your teacher, or someone else you respect to help you identify some places in your community you can go to seek justice. What must you do once you are there?

SUMMARY

TRANSFORMATION



Point A is where we are, and point B is where we **want** to be. The process of getting from A to B is called **Transformation**.

Transformation involves addressing the injustices of the past and taking steps to build a country in which all people participate and have rights no matter what their race, religion or gender.

Our History

In order to appreciate where we are today, we must understand our history.

1910:

South Africa adopted its first constitution that gave rights to the white minority but took away the right to vote of the majority of South Africans.

1948:

The National Party, the party supported by the Afrikaaners, took control and started a policy that came to be known as apartheid.

1949–1952:

Series of apartheid laws passed, including laws that made it a crime for people of different races to live in the same areas, that prohibited people of different races from marrying, and that required all black people to carry pass books at all times.

1955:

Through the Congress of the People, the ANC and its allies wrote the Freedom Charter together: a document that listed the peoples' demands about the kind of South Africa they wanted to live in.

1990:

Nelson Mandela was released from Robben Island. The apartheid government started negotiating with the ANC and other liberation movements.

1994:

An interim constitution that gave the vote to everyone was adopted for two years. During that time the elected government worked as the Constitutional Assembly and drafted a final Constitution. Free and fair elections were held for all South Africans.

1996:

The Constitution was negotiated and accepted by the Constitutional Court.



Some Important People



Nelson Mandela – “Madiba”

ANC President and first president of democratic SA; Nobel Peace Prize winner; imprisoned for 27 years on Robben Island.



Oliver Tambo

President of the ANC from 1967-1991; spent over 30 years in exile running the banned ANC from outside the country and attempted to get international support for resistance.



Helen Suzman

The only person in Parliament during apartheid who was absolutely opposed to apartheid; in Parliament for 36 years.



Yvonne Mokgoro

First black female judge on the Constitutional Court.



Ashely Kriel

Cape Town student leader from Bonteheuwel who was shot dead by security police in 1987.

LESSON 3

Political Transformation

Name: _____ School: _____ Prepared By: _____

Overview & Purpose	Education Standards Addressed

	TEACHER GUIDE	PUPIL GUIDE	
Objectives			Materials Needed • None
Information			
Verification			Other Resources • None
Activity			

Introduction:

As discussed in the previous lesson, the underlying reason and purpose of the Constitution is to encourage and facilitate transformation. We have started to discuss the concepts of transformation, but now we take an in depth look at what it really means for the country.

The word transformation has been thrown around since the birth of our democracy and has become a buzzword for some sort of 'change'. We know transformation is important, but few people know what it actually means, what it is and what the desired outcome should be.

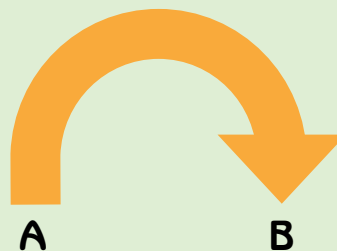


GROUP ACTIVITY

Exercise 1:

Have a class discussion on what the learners think transformation is, what they believe it should be and then gauge where or how far we, as a nation, has transformed.

A good illustration and explanation of transformation can be illustrated with this diagram below.



Point A is where we are, and point B is where we **want** to be. The process of getting from A to B is called transformation.

As mentioned above, there are different types of transformation as set out in the Constitution: The first type is Political Transformation and the second is Social Transformation. In this lesson we will be focusing on Political Transformation.

But, before we can evaluate what political transformation is, we need to understand what it is that we are seeking to change, or transform. As the old saying goes, 'you can't see where you going until you know where you have come from'.

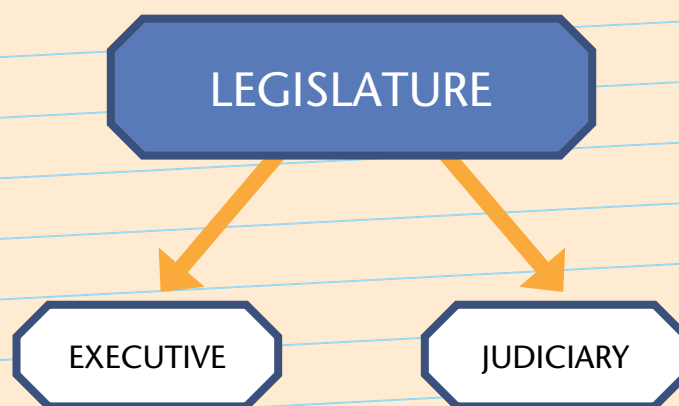
POINT A: Where we have come from

Since we are talking about political transformation it would follow that we are indeed talking about the change or transformation of our political system and structure.

So what did we have before our democracy in 1994?

Comments for TEACHING Fellows:

It is at this point that you need to engage with either the black or white board to illustrate this subject. Copy the following diagram onto the board for ease of explanation and a visual aid to learning.





GROUP ACTIVITY

Exercise 2:

You first need to pose the question to the class of WHY a country would separate the different jobs and function into different bodies.

Obviously the answers would be to facilitate a smooth running country, sharing the burden, assigning roles so that each body can focus on their own task. Explain that ALL 3 branches of government make up government and that their original conception of the government only being the Executive is incorrect (if this is what they guessed).

For each branch of government you are going to ask 2 questions:

- 1) Who belongs in that group?
- 2) What do they do?

Executive:

- 1) With the executive branch of government you are going to have the President, his cabinet, municipalities and the police. Feel free to mention more, but for ease of understanding these are sufficient. For example, discuss local government as being part of the Executive and how this sphere is closest to our lives.
- 2) The executive branch of government ENFORCES the laws of the country. They are there to make sure that people obey the law. They decide on the path that the country should follow when it comes to economics, monetary policy and social conduct. The executive are seen as the 'leaders' of our country.

Continued...

Legislature:

- 1) Parliament is the legislature, based here in Cape Town, and they are made up of party representatives. They are there to represent the people of South Africa. They are the people's voice. The Legislature is divided into National and Provincial Legislature. Provincial Legislature are the law makers of the individual province while national legislature make laws that concern the whole country.
- 2) This branch **MAKES** the laws. Parliament is made up of elected officials said to be representative of the people. Their job is to make the laws that govern our country. Since they are made up of both majority and minority parties, all the different voices of South Africa are said to be taken into account in the lawmaking process so as to ensure fair and equal treatment before the law.

Judiciary:

- 1) The judiciary is made up of the courts of the country. Explain in brief the court hierarchy, starting from the Constitutional Court all the way to the Magistrate Courts. The Judiciary also include the Equality courts, Labour courts as well as Juvenile courts.

Question: Ask the learners where their local Magistrates court is? Ask whether they have ever had to engage with it.

Continued...

- 2) This branch is there to adjudicate, or judge on the laws. Their job is to solve disputes that arise within our country using the laws of our country. This is an independent branch that does not favour a political party, this is essential to ensure a fair trial. It is this branch of government that we will be spending most of our time dealing with since they are seen to be the guardians of the rule of law.

So, the legislature MAKES the laws that the executive ENFORCES in order for the judiciary to JUDGE on.

Comments for TEACHING Fellows:

The upcoming example is the crux of the lesson. It is here that the importance of political transformation becomes apparent. Be methodical and meticulous in making sure that everyone understands before moving on. Remember that this example is not 100% factually correct, it is a simple to understand example of how the Apartheid government used the British Style Parliamentary system to abuse its power.

CASE STUDY

Ask the pupils if they know of the Group Areas Act. [A refresher: this was the law that officially separated races into different areas with all 'non-whites' placed in inferior areas and denied the right to live in 'white' areas.]

Parliament passed this law. The Executive branch was thrilled about this law and supported Parliament 100%. It said that it would ENFORCE that law at all costs. However, what many people don't know is that there were many Judiciary members who opposed such laws and refused to JUDGE on them. In other words, some judges refused to be the judge and give a ruling in a certain matter that involved these unfair laws and cases. But since Parliament was all-powerful, it said:

'You know what, since you not going to judge on this law and some of you are opposed to it, as we are all powerful we are going to pass another law. This law is going to INCREASE the number of people of the judging panel, we are then going to pack that increased panel with pro-Apartheid judges and silence all those members of the judiciary who are against this law.

And that's what Parliament did. They passed a law to increase the number of judges on a judging panel, packed that increased panel with pro-apartheid judges (i.e judges who are in favour of apartheid), and all those who opposed the judgment of the Apartheid laws were silenced.

One can now see how this concentration of power can be abused to the detriment of the masses.

Comments for TEACHING Fellows:

In my experience, this example of 'speech' by Parliament needs to be repeated seeing that it can be somewhat confusing.

So, before 1994, South Africa followed the British Style Parliamentary System. This meant that Parliament held ALL the power. Any law that was made by Parliament was said to be law regardless of what either of the other branches said. Since our country at that time was an Apartheid state, the South African Parliament was made up of only white people. Now, if Parliament is supposed to be the 'voice of the people' and represent the people of the country, we can see that this Parliament was in fact NOT a true representation of the masses. As a result of the Apartheid system many oppressive and racist laws were passed through Parliament and were thus made to be the law of the country and no one could say anything to change that law, or ask Parliament to change it, if Parliament did not wish too.

Power was thus held by this branch of government, and when power is held by one body that power can be used for good or evil and in this case the power was abused.

POINT B: Where we are now

Obviously this political system was too risky and open to abuse to be the model for our new South Africa. After looking at models followed by other countries around the world, we decided to adopt the Separation of Powers model.

In this model we still have the Executive, Legislature and Judiciary, but the way in which they are structured and interact with one another is very different.



GROUP ACTIVITY

Exercise 3:

It is at this point that you need to engage with either the black or white board to illustrate this subject. Divide the board into 3 columns. At the top of the first column write 'EXECUTIVE' at the top of the second 'LEGISLATURE' and at the top of the third 'JUDICIARY'.

Before you fill in the members of each branch, ask learners to volunteer to come up to the board and see if they can identify any. Allow them to stay in front of the class and play the role of the member that they have identified.

Continued...

Give the learners stickers with names of members of different branches that they are representing. Explain to the learners that they will now do a role play illustrating how these branches behaved before and after we became a democracy in 1994. For the pre-1994 period, ask the Executive and Judiciary to crouch down while the Legislature remains standing. The Judiciary kneeling should try to influence the Parliament, but be rebuked. The Executive should be seen to be in cahoots with the Parliament. Then, have the same people simulate the post-1994 period. Each now is standing equally in a line. Illustrate Checks and Balances by having them “check” each other’s actions. For example, Parliament wants to pass the Secrecy Bill, and the Judiciary halts it to check its constitutionality. And on & on.

EXECUTIVE

- President – ANC
- Cabinet
- Municipalities
- Police
- **ENFORCE LAWS**

LEGISLATURE

- Parliament
- Provincial legislature
- **MAKE LAWS**

JUDICIARY

- Judges
- Courts
 - * Constitutional Court
 - * Supreme Court of Appeal
 - * High Courts
 - * Magistrates Courts
- **JUDGE LAWS**

In this model, there is a separation of power between each branch. No longer is power held in one branch but is divided among the different branches of government. So power, is not in the hands of **one** body, namely the ruling party or ANC, but spread across the 3 independent branches.

Question to the class:

So, to review, why would we want power to be split among 3 different independent bodies and not concentrated in one body?

Possible Answers:

To avoid corruption, make sure everyone is doing their jobs correctly, share the load of governance and help keep everyone in check. These of course are generic answers but invite the class to be creative in their approach and of course in your own answers.

Question to the class:

So now we have seen that power is divided among three branches of government. How do we make sure that one branch does not abuse its power? Is there a way?

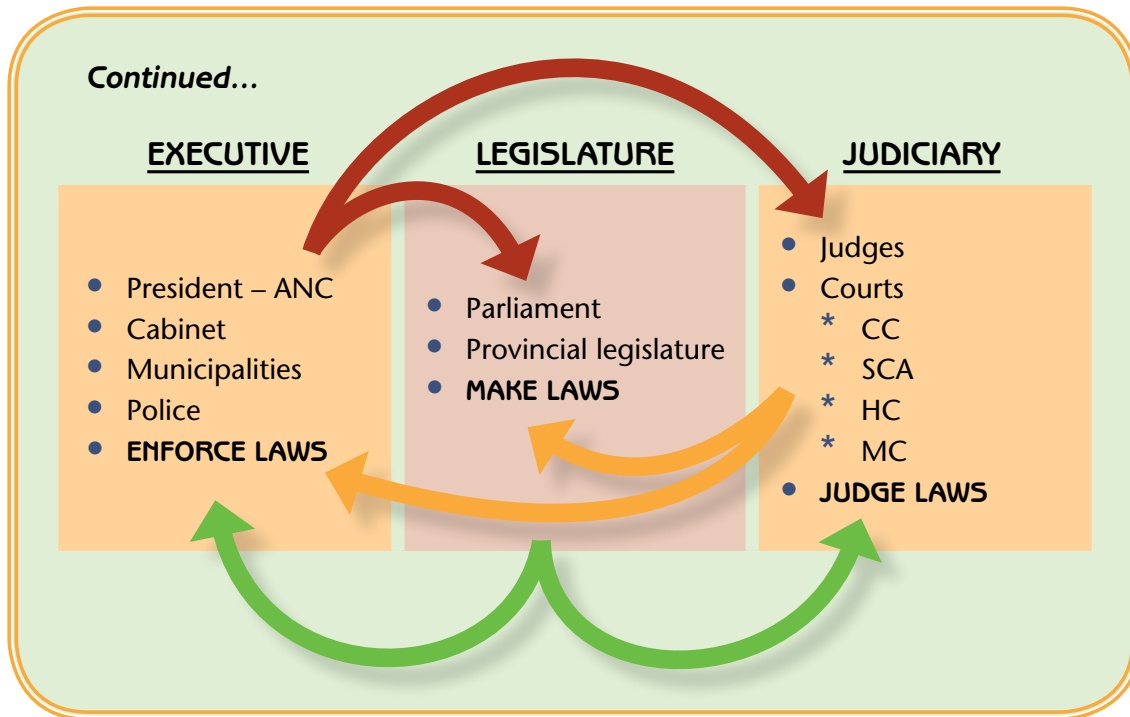
Possible Answers:

It is good to have separation of power but there needs to be something MORE. It is not good enough to say 'OK, this is what you do and what you do and oh, don't you just want to make sure the other guy is doing his job?' NO! There has to be something else. And that something else is defined in the Constitution. It is a system known as Check and Balances.

**GROUP ACTIVITY****Exercise 4:**

Pose scenarios of checks and balances that apply to learners. For example, if you misbehave in school, what happens? You can be sent to the principal or receive demerits. That is a way to monitor your behavior and too make sure you stick to the rules. If you misbehave at home, what happens? That is a check and balance on your behavior.

So checks and balances are used to make sure that each branch of government is behaving properly. In other words:



Everyone is watching each other! The Constitution sets out these checks and balances and allows the other branches to hold the others accountable.

Comments for TEACHING Fellows:

A couple of metaphors for separation of powers that you can use with learners are school governance (RCL) and soccer (FIFA). In each scenario, who plays the role of executive, of legislature, and of judiciary? It may reveal that power is concentrated unduly in one entity. No problem, have a discussion with learners about how this could / should change.

For Example:

- A) If Parliament passes a law that is unfair and unjust, then the judiciary can rule that law to be unconstitutional or change it slightly to make it acceptable. That is a check and balance on the power of Parliament and their law making capacity
- B) If the executive is not performing correctly then Parliament can vote to dissolve the cabinet and call for new elections. That is a check and balance on the executive power.
- C) The legislature has control over the budget of each branch so if either branch is not living up to its mandate then the legislature can assign them less money and that is a check and balance that the legislature can use.

So now what? Now that we have these systems in place ensuring separation of powers and checks and balances, what now? Who is to say that the branches of government will adhere to these check and balances? There needs to be something else. And there is, it is called the

Rule of Law

This is one of the most important concepts and values of the Constitution. So important that it is one of the first items mentioned in the Constitution. S1 of the Constitution reads as follows:

'the Republic of South Africa is one, sovereign, democratic state founded on the following values of supremacy of the constitution and the rule of law.'

So what is the rule of law?

Well the concept of the rule of law is two-fold:

- 1) Each branch of government cannot tell another branch what to do unless the laws of the country allow for that act to be done. In other words, no branch of government can force another to do anything if that thing they want done is illegal.
- 2) The second aspect is a blanket protection and applies to all branches and it says that every branch of government MUST obey the rules and laws of our country.

Therefore, we have the separation of powers, protected by checks and balances and driven and motivated by the rule of law.



GROUP ACTIVITY

Exercise 5: Pen Game

Split the learners into 2 groups. Announce that you are playing the Pen Game and once there are 2 groups just say "OK, start the game".

Obviously there is going to be confusion as they don't know how to play the game. Let the confusion and murmuring linger for a bit and then continue by illustrating how important it is to know the rules before one can play the game. It is very similar to real life and our law. People need to know the rules before they can play the game.

So this is our current political structure. This is how our political system works in this country. We can see that with this model, an unfair, unjust or racist act from either branch of government can be rectified or stopped by another branch of government, as opposed to the system pre-1994. Power is thus separated. That power is kept in check and all branches are governed by the rule of law and the adherence to the laws of this country.

And that is political transformation. We went from the British Style Parliamentary System in Apartheid where Parliament held all the power, to a constitutional democracy where the branches of government are not ruled by one another but rather by the Constitution itself. Point A to Point B -Transformation.

CASE STUDY

DISCUSS ARTICLE AND ASK HOW CLASS THINKS IT AFFECTS SEPARATION OF POWERS:

‘Concourt: Zuma accepts Nkandla report binding’

[9 February 2016 Emsie Ferreira]

President Jacob Zuma's lawyer has conceded that the Public Protector's findings were binding and her report on Nkandla has to be complied with.

In an extraordinary string of concessions, President Jacob Zuma's lawyer told the Constitutional Court on Tuesday that he accepted not only that the Public Protector's findings against him in the Nkandla scandal were binding, but that the police minister's conflicting report on the subject was meaningless...

Gauntlett added that Zuma placed no reliance whatsoever on Police Minister Nathi Nhleko's controversial parallel report on Nkandla that found that he did not owe the state a cent for luxuries added to his house, notably a swimming pool and cattle kraal. That report was driven through Parliament by the ANC majority, and prompted opposition parties to go to court to enforce Madonsela's findings...

This list of five, which included the swimming pool and kraal, were the only items for which Madonsela had sought to hold the president liable in her report "Secure in Comfort".

Gauntlett also took issue with inferences by lawyers acting for the Economic Freedom Fighters and the Democratic Alliance that Zuma had acted in bad faith when he ignored Madonsela's directives.

Earlier, Wim Trengove, for the EFF, said Zuma had flagrantly breached the law and the obligation on him to uphold the Constitution in order to hold on to “illgotten wealth”.

The EFF and the DA, in separate applications, have asked the Constitutional Court to rule that the failure to comply with the remedial action set out by Madonsela constituted a breach of constitutional duties by both Zuma and the National Assembly.

Risk of impeachment

With a nod to upcoming local government elections, Gauntlett pleaded that this could put the president at risk of impeachment.

“This is a delicate time in a dangerous year,” Gauntlett told the eleven justices who are hearing the case...

He told the court earlier that direct access to the court for the applicants was in the court's hands and that he had nothing to add to the matter.

In 2014, Madonsela identified a cattle kraal, chicken run, amphitheatre, visitor centre and a swimming pool as non security features for which Zuma should pay a reasonable amount back to the State.

In a surprising move last week, Zuma offered to pay a portion of the money, the sum of which would be determined with the help of the Auditor General and the Treasury.

The DA and the EFF have since rejected Zuma's offer and committed to proceed with the court hearings. The parties want the court to make a ruling on Madonsela's powers.

The hearing continues. – African News Agency (ANA)

SUMMARY

Branches of Government

In South Africa we have 3 branches of government: the **executive**, the **legislature** and the **judiciary**.

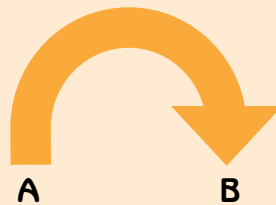
The **executive** branch of government enforces, or “executes”, the laws of the country. It includes the President, his cabinet, municipalities and the police.

The **legislature** makes the laws. Parliament is our legislature, based in Cape Town, and it is made up of party representatives, elected to represent the people of South Africa.

The **judiciary** is our legal system that solves disputes that arise within our country using the law. This is an independent branch that does not favour a political party.

So, the legislature MAKES the laws that the executive ENFORCES in order for the judiciary to JUDGE on.

POLITICAL TRANSFORMATION

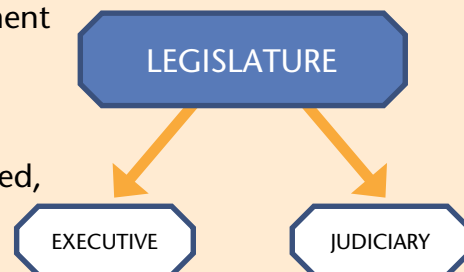


Point A: Where we have come from

Before 1994, Parliament held ALL the power. Since our country at that time was an apartheid state, the South African Parliament only included white representatives, which was NOT a true representation of the masses.

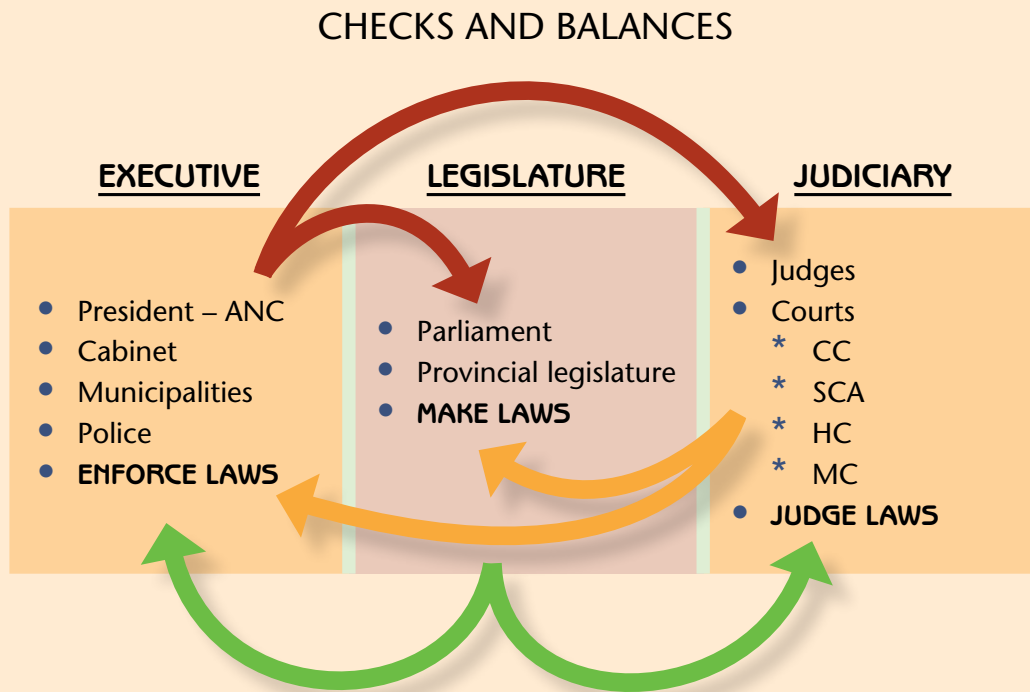
As a result, many racist laws were passed and no one could make Parliament change it if Parliament did not wish too.

Power was thus concentrated into one branch of government, and when power is concentrated, that power can be used for good or evil; in this case the power was abused.



Point B: Where we are now

In the new political structure everyone is watching each other! The Constitution sets out these **checks and balances** to allow each branch to hold the others accountable.



For Example:

- If parliament passes a law that is unfair and unjust, then the judiciary can rule that law to be unconstitutional or change it slightly to make it acceptable.
- If the executive is not performing correctly then parliament can vote to dissolve the cabinet and call for new elections.
- The legislature has control over the budget of each branch so if either branch is not living up to its mandate then the legislature can assign them less money.

The **rule of law** is one of the most important values of the Constitution. It means that no one is above the law itself. Every branch of government **MUST** obey the rules and laws of our country.

Therefore, we have the separation of powers, protected by checks and balances and driven and motivated by the rule of law.

LESSON 4

Democracy, Accountability & Public Participation

Name: _____ School: _____ Prepared By: _____

Overview & Purpose	Education Standards Addressed

	TEACHER GUIDE	PUPIL GUIDE	
Objectives			Materials Needed • None
Information			
Verification			Other Resources • None
Activity			

Last week we discussed political transformation and you learnt about the separation of powers and constitutional supremacy.

Review

Today we discuss another aspect of political transformation: accountability and public participation. How can YOU get involved with government to make sure it is working correctly? Why should you get involved?

Firstly, though, what is governance?

Governance is the job of the government, which makes and enforces rules and law at local (in communities), provincial (in provinces), and national (across the country) levels.

Quick recap: what branch of government is responsible for making and enforcing rules and law?

Answer: Executive

One way to think about governance is to look at your home. The democratic government of South Africa must provide services to your house.

Comments for TEACHING Fellows:

At the end of this lesson we have attached a newspaper article about the importance of governance which should be read to learners, or alternatively handed out to them. Learners should then be asked to comment or provide their thoughts on the views expressed in the article.



GROUP ACTIVITY

Exercise 1:

Divide class into small groups. In each group, have learners discuss, 1) Are there services used by all people living in your household? 2) Which services would you miss most if government did not provide them? 3) What do we give government for giving us these services? 4) Which services are most important to you?

Another way to think about governance is to think about how your school is governed. **Is there a Representative Council of Learners (RCL) at your school, and a School Governing Body (SGB)?** There is supposed to be one of these for every public high school in South Africa.

What is the RCL and what does it do for your school?

RCL = only recognized and legitimate representative learner body at school. List its functions (school safety, learner behaviour, career guidance, educational matters).

What is the SGB and what does it do?

SGB = partnership between all people who have an interest in education – parents, educators, learners, members of local communities and various education departments. List its functions (decide on admissions policy, decide on language policy, decide on code of conduct, disciplinary actions for learners).

Do you feel powerful at school? Why or why not? How can a school make learners feel powerful? What would a school look like if it allowed learners to claim power?

Now, why should you get involved in governance?

Explain concept of citizenship. A person's relationship to the country in which he or she lives. If you are seen as a member of a country, then you have certain rights and responsibilities, including the right to participate in national decision-making. The flip side of having a right is that you have a responsibility to uphold them.

For example, citizenship also gives you the right to vote. You vote the government into power, and once it is there, it has to deliver its promised goods and services to you. If it does not, we all have the right to hold the government accountable, or keep it in check to make sure it is performing its duties.

But it is important to note that citizenship is not just about whether you are formally a citizen of a country. You could be living in South Africa from another country, not able to gain citizenship here, but actively contributing to the welfare of your community and country. You would then be an active citizen. As an active citizen, you actively contribute your input on issues that affect you and participate in bringing positive change to your community.

Even though there are a few sections of the Bill of Rights that refer specifically to the rights of citizens (like political rights and the right to Freedom of Trade), most rights are given to everyone in South Africa. Section 7 of the Constitution specifically states that the Bill of Rights 'enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom'.

In the same way that our Constitution protects the rights of all people in South Africa, everyone can also be active participants in the development of their communities.

What is participation?

Part of citizenship is being actively involved in decision-making or participation, and deciding on and then following the rules of the game.

Why is it so important?

If citizens do not vote in elections, a democratic government cannot be formed that represents everyone. And if you only vote, and do not do anything else, then the government can fall victim to corruption because no one is monitoring it. So participation is important to ensure that everyone's interests are promoted and that leaders do not abuse their powers. Also, your participation brings different needs, concerns and views to the table – you tell government what you want.

So how can you be involved in government?

- 1) Vote
- 2) Participate in civil society organisations: youth groups, human rights groups, neighborhood groups
- 3) Stay informed about what the government is doing – attend public meetings/hearings
- 4) Tell government how you feel about specific issues by writing letters, drafting a petition, organising meetings or phone calls
- 5) Write a letter to a newspaper or engage in a radio debate
- 6) Have discussions with your friends and family and neighbours about different issues
- 7) Volunteer your time serving your school or home community
- 8) Get involved with your ward committee and ward councillor
- 9) When a bill is being considered to become law, provide your comments on whether the bill is good and just.
- 10) Encouraging adults to vote in the local or national elections.



GROUP ACTIVITY

Exercise 2:

Learners should be requested to write a one page letter to their local government official or the President about any issue which may be of concern to them in their community (could be school community or where they live). This may assist with making learners start understanding the importance of participation in a practical manner.

Next we will discuss the structure of government. Last week, you heard about the separate branches of government. Who can remind us what the three branches of government are? Let us look a little closer now at each of those branches.



GROUP ACTIVITY

Exercise 3:

Divide learners into groups and pose questions in relation to the different courts, based on the handout provided at the end of Lesson 3. One learner per team should be nominated to provide a final answer on behalf of their team. A small prize can be awarded to the team which provides the most correct amount of answers.

Comments for TEACHING Fellows:

Ask learners to consider which court the parties should approach for assistance with their dispute in the Group Activity below. This is a practical activity based on different scenarios.



GROUP ACTIVITY

Exercise 4:

- 1) Mary is caught shoplifting a cheap dress from a shop in Durban. What court will she appear in? Where can she appeal?
- 2) John is charged with raping a woman in Pretoria. Where will he appear? If he wishes to appeal, where should he go?
- 3) Bheki buys a TV that does not work from a shop in Cape Town for R3000. If the shop refuses to refund his money, which court should he approach? Where can he appeal?
- 4) Peter buys a car from a garage in Johannesburg for R25,000. It breaks down 3 days later. Which court must he use to get his money back if the garage refuses to refund him? Where can he appeal?
- 5) Vusi and Ernest live in a village in KZN and have a dispute over ownership of cows. Which court should they approach about their dispute? What if they are not satisfied?
- 6) Maria in Cape Town wants to divorce her husband. Which court should she use?
- 7) Sipho, a lawyer in Kimberley, wants to challenge a new law that he thinks violates the Bill of Rights for being unconstitutional. Where should he go? Where can he appeal?
- 8) A community knows that Bob is involved in organised crime and sells tik. They complain to the police but the police say they cannot do anything because they have no evidence. The people think Bob is paying off the police to keep them quiet. What can they do?
- 9) Ahmed's dog keeps going onto Benny's property and attacking his chickens. Benny tells Ahmed to control his dog but Ahmed does nothing. What can Benny do?

Now that we have looked at the judiciary, we will look to other spheres (or levels) of government.

National, Provincial, and Local. Dividing government into spheres is part of a process called decentralisation, a way of ensuring that not all the power is concentrated in the centre or at the top. This is also an example of checks and balances that we discussed in the previous lesson.

What does each sphere focus on?

National: responsible for major things that affect the country as a whole, like safety and security, foreign affairs, defence, immigration, education, the economy, national health, national housing, national roads, national tourism, police. It sets standards for providing services for the whole country. It develops policies and laws for how provincial government will carry out its functions. National elections are once every five years.

Provincial: delivery of social services in each province, water, sanitation, transport, electricity, healthcare, education, security and housing. Provincial elections are once every five years as well.

Local: closest to you, delivery of goods and services that affect people daily, like refuse removal, electricity, water, traffic control, libraries. Councillors are elected every four years.

Comments for TEACHING Fellows:

Use this exercise to introduce the idea that not all disputes should or can go to court. People can resolve disputes without going to court and without taking the law into their own hands. For example, there are methods known as negotiation, arbitration, and mediation. Community organising is also a powerful tool.



GROUP ACTIVITY

Exercise 5:

The CLASI Community Service Project should be introduced. Learners should be tasked with identifying possible issues affecting their school or community which could be addressed as part of the project. Feedback should be given at the beginning of Lesson 5 and one topic should be chosen, based on a vote by learners.

CASE STUDY

Open Parliament to the people

*03 AUG 2012 04:15 NKOSIKHULULE NYEMBEZI
& SAM WATERHOUSE*

Strong legislatures in Parliament are essential to improving people's quality of life, writes Nkosikhulule Nyembezi and Sam Waterhouse.

Parliament and the provincial legislatures are democratic spaces that belong to the people of South Africa.

Our elected re-presentatives are required to consult with citizens to give reality to their rights. This extends to the municipal level, through structures such as the ward committees, which must enable meaningful engagement on matters affecting people's lives at local level. But is this happening?

In its vision for 2030, the national planning commission raised "serious concerns about whether Parliament is currently fulfilling its role adequately in the building of a capable, accountable and responsive state" – one that can address poverty, inequality and provide public services.

As South Africans we have to admit the enormous challenges inherited from both apartheid and colonialism, which the legislatures are dutybound to address, and the shortcomings of our legislatures in addressing these stubborn legacies...

The elements of our constitutional democracy include elected representation, public participation, rule of law, separation of powers, accountability and legitimacy...

By building Parliament and the legislatures so that they are empowered to fulfil their constitutional mandate and ensuring that they are accessible and responsive to the public, we advance our democracy. Strong legislatures that perform their oversight functions are an essential part of improving people's quality of life...

The challenge lies in ensuring that public participation processes reconcile competing demands while preserving the legitimacy of democratic institutions in the eyes of the public.

SUMMARY

Governance is the job of the government, which makes and enforces rules and law at local (in communities), provincial (in provinces), and national (across the country) levels.

Citizenship is a person's relationship to the country in which he or she lives. As a citizen, you have certain rights and responsibilities, including the right to vote and to hold the government accountable.

Part of citizenship is being actively involved: **participation**. If citizens do not vote in elections, a democratic government cannot be formed that represents everyone. And if you only vote, and do nothing else, then the government can fall victim to corruption because no one is monitoring it.

It is important to note that citizenship is not just about whether you are formally a citizen of a country. You could be living in South Africa from another country, not able to gain citizenship here, but actively contributing to the welfare of your community and country. You would then be an active citizen. As an active citizen you can give input on matters that affect you and participate in the developing positive change in your community.

So how can you be involved in government?

- 1) Vote (once you are 18)
- 2) Participate in civil society organisations
- 3) Stay informed about what the government is doing – attend public meetings/hearings
- 4) Tell government how you feel about specific issues by writing letters, drafting a petition, meetings or phone calls
- 5) Have discussions with your friends and family and neighbours

Spheres of Government

Dividing government into spheres, such as national, provincial and local, is part of decentralisation, a way of ensuring that not all the power is held at the top.

National: responsible for major things that affect the country as a whole, like safety and security, foreign affairs, defence, immigration, education, the economy, national health, national housing, national roads, national tourism, and police.

Provincial: delivery of social services in each province, water, sanitation, transport, electricity, healthcare, education, security and housing.

Local: closest to you, delivery of goods and services that affect people daily, like refuse removal, electricity, water, traffic control, libraries.



LESSON 5

Social Transformation

Name: _____ School: _____ Prepared By: _____

Overview & Purpose	Education Standards Addressed

	TEACHER GUIDE	PUPIL GUIDE	
Objectives			Materials Needed • None
Information			
Verification			Other Resources • None
Activity			

Introduction:

We have previously discussed that in fact the notion of transformation is two-fold. It includes both political and social transformation. In lesson 3 we discussed political transformation and in this lesson we will be learning about social transformation.

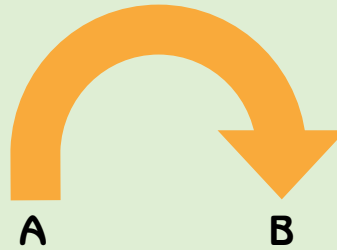
To recap: Transformation is going from Point A to Point B



GROUP ACTIVITY

Exercise 1:

Recap the illustration and explanation of transformation with the diagram below.



Point A is where we are, and point B is where we **want** to be. The process of getting from A to B is called transformation.

Question:

What does social transformation mean and what does it require?

Possible Answer:

Social transformation is the shift of our society from the formal apartheid era society to a new society that considers moral and political values and understands people's lived realities in South Africa. It means we, all of us, need to rethink our social behaviours, attitudes and norms. It also requires all of us to be creative in how we achieve this.

Comments for TEACHING Fellows:

As the facilitator, the answer above is a guideline, a blueprint as it were. For reflection we would like you to answer the question for yourself. What is social transformation? This is a great exercise of personal introspection as it sets the platform for both you and the learners to understand the rest of the lessons and how they relate to the BOR.

**GROUP ACTIVITY****Exercise 2:**

This exercise is merely to get the learners thinking about our previous and current social structure. It is not to paint a bleak picture of our country, but to illustrate the change that has occurred and the change that needs to occur.

Draw three columns on the board. The first headed 'PAST', the second headed 'PRESENT' and the third headed 'FUTURE'.

Continued...

<u>PAST</u>	<u>PRESENT</u>	<u>FUTURE</u>
<ul style="list-style-type: none"> • Apartheid (Oppression of majority of black people) • No freedom • Lack of opportunities 	<ul style="list-style-type: none"> • Poverty • Unemployment • Poor service delivery • Corruption • Racism 	<ul style="list-style-type: none"> • Equality • Jobs • Freedom • Human Dignity

Then fill each column with the learner's suggestions to each of the following question for each of the columns:

PAST: What was wrong about our social structure, or society, in the past?

PRESENT: What are the challenges that our current social structure, or society, face today?

FUTURE: How would we like our social structure, or society, to be?

This illustration on the board can be seen to show social transformation. A social transformation chart if you will. Point out the differences between the PAST and PRESENT and how the challenges are different, that's social transformation. Highlight the differences between the PRESENT and the FUTURE and those future goals are what drive social transformation in our country. So the PAST would be seen as Point A and the FUTURE as Point B.

So, social transformation is the process that facilitates collectively uplifting our country for the betterment of the majority of our population. In other words how can we work together for social change and justice? It is also about individually restoring the dignity and freedom of each individual person.

Question:

BUT, how do we get there? What is the vehicle or engine behind social transformation?

Possible Answer:

Just like the Constitution is the driving force behind Political Transformation and changed the structure of how we do things in South Africa, so too is the Constitution the driving force behind social transformation, especially the Bill of Rights.

The Bill of Rights, which is found in Chapter 2 of the Constitution, lists the rights that are to be enjoyed by **all people** in South Africa. Remember the Constitution is the highest law in the land. So any law or action that goes against the rights you have in the Bill of Rights is illegal.

So, let's take a look together at the Bill of Rights. The Bill of Rights forms Chapter 2 of the Constitution and contains 32 sections. The first section in the Bill of Rights reads as follows:

Section 7 – Rights:

'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.'

This is the introduction to the Bill of Rights and illustrates the three foundational values to our democracy as well as form the basis and purpose of all the rights in the BoR, namely human dignity, equality and freedom. These 3 individual rights will be discussed separately in following lessons.

Section 8 is also a very important section and says that the BoR applies to all branches of government, namely the executive, legislature and judiciary, as well as applying to all people in our country.

This is very important as it is saying that NO person can be denied a right in the Bill of Rights and that ALL rights applies to ALL people equally and fully. This is a very important point to stress, as it will be revisited when we discuss limitation of rights later on. In other words, you have as many rights as your Ward Councilor, your teacher and even the President.

Now, since we are speaking about social transformation, once again we need to evaluate the proverbial Point A and Point B. Where we were are where we are going to.

POINT A: Where we have come from

Before our democracy in 1994 there was no official Bill of Rights, in fact the concept of rights was widely unknown or unexplored. One can see how apartheid would not have favoured a Bill of Rights because the system refused to grant ALL people full and equal rights. Instead, what we had was a system quite the opposite. In the apartheid system, rights were DENIED. Rights were abused, taken away and undermined. There was no developed concept of rights and rights did not accrue to everyone. As a result, what we had was gross human rights violations on all fronts. Human dignity, equality and freedom were three rights that did not exist for the majority of the people of this country.



GROUP ACTIVITY

Exercise 3:

Ask the class to define each right as best they can:

- Human Dignity
- Equality
- Freedom

Discuss each right in the context of our past.

- Discuss how human dignity was abused:
- Discuss how equality was abused:
- Discuss how freedom was abused:

Discuss example of each right's abuse and try as best as you can to paint the picture of human rights violations in pre-1994 South Africa.

POINT B: Where we are now

With the dissolving of the apartheid government and South Africa now on the road to democracy, the idea of social transformation came to the fore. How were the writers of the Constitution going to rectify the human rights abuses of the past? How were they going to ensure that human dignity, equality and freedom could prevail in our new democracy?

These were the challenges that faced the writers of our Constitution. The idea of a Bill of Rights is not unique to South Africa; many countries have a similar document which attempts to instill a sense of social norms and values. Our writers of the Constitution and Bill of Rights drew heavily on the UN Declaration of Human Rights, which is an international document or Bill of Rights which purports to set an international standard of rights and state duties.

These rights are known as **Human rights**. Why?

A **Human right** is something that assigns responsibilities and entitlements to all people just because they are human. No one gives them to you, and no one can take them away.

So what are the responsibilities? And who has them?
And who has the entitlements?

Well, the Constitution means that not only the government, but all people, must respect your human rights. And you, too, must respect others' human rights. And the Constitution also says everyone has entitlements, meaning others must act in a certain way towards them.

The writers of our Bill of Rights looked at what we had and they identified that three rights were continually and severely abused, namely human dignity, equality and freedom, and thus they decided that these should be the most important rights. These rights would underpin the whole constitution so that if any conduct abused any of these rights it would be declared unconstitutional.

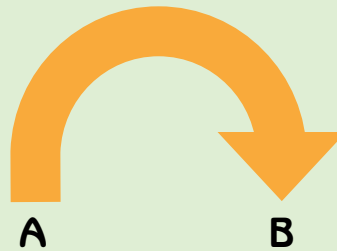
And so, using these three rights as the underlying values of our constitution all the other rights were formulated to give effect to these three major rights. Thus bringing us to where we are today. But, let's evaluate our current position.



GROUP ACTIVITY

Exercise 4:

In this exercise ask the learners how far along the transformation graph we are. Ask them if these three major rights are indeed being respected and to what extent. Draw the original transformation diagram.



After discussion plot with a cross how far along the curve the learners think we are. If we are closer to Point A or Point B. ask why the class thinks that we are that far or that close to point B. Then ask them what point B would actually look like. What would be different if we were indeed closer or on Point B. once you have done this, and then pose the question of how we can get to that desired point. What can we do to speed up the process of transformation and indeed if it is even a reality in this country?

Comments for TEACHING Fellows:

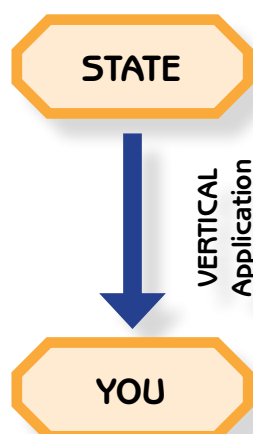
This exercise is a great way of setting the stage for the evaluation of the many rights to come. Since all rights are set to transform our country, if they get a good understanding of the challenges as well as the desired goals, the introspection and deeper understanding of rights, in the context of South Africa, becomes far more interesting and clear.

Question:

So, what are rights? Now that we see that they are the engine behind social transformation, what in fact are they? And how can they be used to better our social context? And who or what can violate your rights? This is a rhetorical question that you should ask purely to engage with the concept of rights. The answer will be extrapolated throughout the lesson.

Possible Answer:

Rights are a guarantee by the state to DO or NOT do something to you. If it is to NOT do something to you, this is called a negative right. So for example, the right to human dignity is a right that protects you from the state taking away or violating your human dignity. If they have, then it can be said that the state has breached or violated your right. This is known as the vertical application of rights.



It is called vertical application since it applied from the top down. Since the state is the top, this right protects us from the state.

Since rights are so important, it is not enough to just protect you from the state; it also needs to protect you from the people around you as well. This introduction of negative rights existing between ordinary people is very important as it allows for an active social transformation on the ground. No other person can take away a right of yours, for example, if some takes away your right safety and security, you can take action against them for the violation of your right. This is known as horizontal application.



This notion of negative rights is a pretty straight forward concept among many other countries in the world. However, where our BoR becomes dynamic and unique is with the addition of POSITIVE RIGHTS.

Positive rights say that the state has to DO something that fulfills your right. It is like an obligation on the state to do something for you. This is unique in that it places a burden on the state to provide you with those rights. What these rights are will be discussed in detail at a later stage, but for now just understand that these types of rights exist.



GROUP ACTIVITY

Exercise 5:

It is at this point that you should ask the learners what rights they know of. This is just a gauge to identify the current knowledge of the learners and also to hopefully dispel incorrect notions.
[See Appendix of Rights / Freedoms]

Question:

So what is the relationship between rights and social transformation? Can a Bill of Rights encourage such change?

Possible Answer:

The answer to this question is two-fold:

- 1) Having a formal system or Bill of Rights entrenches the need for change. The formal existence of these rights in our country creates the impression that we are serious about change and that we finally have a vehicle to assist with the change. This Bill of Rights helps to change the perceptions of society and creates a new standard of norms. Norms of how to treat one another, what is acceptable and what is not and what we as a society are striving for.
- 2) Having a formal recognition of these social norms allows violations of these norms to be prosecuted. In other words violations of rights are justiciable in our courts, which means that one can take another to court, including the state, for a violation of their right. Justiciable means that a court will be able to hear a matter and be able to make a judgment on it. This allows for the enforcement of rights and a deterrent against violating rights. In other words it is meant to discourage people from violating the rights of others. This adds to our understanding or perception change that rights are important and should NOT be violated.

These two answers are examples of how rights affect social transformation. There are of course many other ways in which the Bill of Rights gives effect to it.



GROUP ACTIVITY

Exercise 6:

Have a discussion with the class in which you help identify other ways in which rights and the Bill of Rights may help and encourage social transformation.

This is a great exercise for you, the facilitator, as well. Think about other ways and identify new answers to this question.

In theory, the Bill of Rights can be seen to give effect to social transformation, but in reality it is you and me, or society, that are truly the driving force behind the change that we wish to see in the world.

The Bill of Rights is merely a vehicle, but it is us who are the engines that give the force to move in a positive direction. The norms and standards created in the Bill of Rights are norms and standards that we must adopt in our own lives and try impress on those around us. Only when we start to change our own perceptions can we see a visible change in the perceptions of our society as a whole.

The lessons to come are going to explore these norms and standards and illustrate how each one encourages us to shift how we think about something. Be mindful of the lessons taught and always keep in mind the social transformative influence that the right seeks to teach.



GROUP ACTIVITY

Exercise 7:

In order for the Bill of Rights to be real to the learners, ask them to recount any stories they know of (from newspapers, TV, word of mouth) or have heard of people or family members that deal with rights. If there are none, then ask the learners to go home and chat to their parents and teachers about any engagement they have had with the Bill of Rights.

Appendix of Rights/Freedoms in the Bill of Rights:

- **Equality** – All people are equal and must be treated equally.
- **Human Dignity** – Your dignity must be respected and promoted.
- **Life** – You have the right to life and for the government not to take away your life.
- **Freedom and Security** – You can't be imprisoned without trial, tortured, or punished cruelly.
- **Slavery, Servitude and Forced Labour** – You cannot be forced to work against your will.
- **Privacy** – You can't be searched or have your home or possessions searched, without the proper procedures being followed by the police.
- **Freedom of Religion, Belief and Opinion** – You can believe whatever you want and you can follow the religion of your choice. State institutions can follow religious practices but people cannot be forced to attend them. You can get married traditionally or under the laws of your religion, as long as these laws do not go against the Constitution.

- **Freedom of Expression** – Everyone, including the press, may say, write or print photographs of whatever they want. But no one can use violence. Also, language which tries to get people to cause harm to other people because of their race, ethnicity, gender or religion is not allowed.
- **Assembly, Demonstration, Picket and Petition** – You can hold a demonstration, picket and present a petition peacefully.
- **Freedom of Association** – You can spend time with anyone you want to and join any organisation you choose.
- **Political Rights** – You can form and support the political party of your choice. If you are a citizen, and are at least 18 years old, you can vote.
- **Citizenship** – Your citizenship cannot be taken away from you.
- **Freedom of Movement and Residence** – You can go and live anywhere in SA, and you can move around the country freely.
- **Freedom of Trade, Occupation and Profession** – You can do whatever work you choose and you have the right to be treated fairly by your boss.
- **Children's Rights** – Whenever a decision is made about a child, the decision-maker must consider the best interests of the child.
- **Labour Relations** – You can join trade unions and go on strike.
- **Environment** – You have the right to a clean and healthy environment.
- **Property** – Your property can only be taken away from you in certain situations and the government pays you.
- **Housing** – You have the right to access proper housing.
- **Healthcare, Water, Food, and Social Security** – The government must make sure you have access to food and water, healthcare, and social security.
- **Education** – You have the right to basic education, including adult basic education, in your own language.
- **Language and Culture** – You can use the language you want to and follow the culture that you choose.

- **Cultural, Religious and Linguistic Communities** – Communities can enjoy their own culture, practise their own religion and use their own language, as long as this doesn't negatively affect other people.
- **Access to Information** – You have the right to access any information that the government and some other organisations have.
- **Just Administrative Action** – You have the right to have the proper procedures and rules followed in any decision taken regarding your rights.
- **Access to Courts** – You can have a legal problem decided by a court.
- **Arrested, Detained and Accused Persons** – People who are arrested, imprisoned, or accused of a crime have the right to be treated properly, to be given medicine and food and not to be harmed.



GROUP ACTIVITY

Exercise 8:

Now that the learners are a little familiar with the different rights, see how well they comprehend the difference by giving them a fact pattern and asking them to break into groups, read the problem, and identify the potential rights at issue. [This is the National Schools Moot Court problem for 2010-11.] Afterwards, have a discussion in which you flag the various rights on both sides of the problem: for Eric, and for the school.

CASE STUDY

Eric Mollemo is an 11 year old boy who suffers from mild dyslexia and is often ridiculed in class by pupils because his reading is so slow – his teacher has also been heard to giggle on occasion when he gets a word wrong.

He is also the school bully and has been tormenting a number of children at the school, both physically and verbally. In the latest incident, all the children were leaving assembly and he made a crude racist and sexist remark to Susie, a girl who is in class with him. He said this within earshot of most children in the school. The remark is so serious that it would clearly be regarded as impairing Susie's dignity. She is severely traumatised by the incident and is booked off from school indefinitely by her doctor.

As a result of this, Eric is accused of hate speech, which is prohibited under the Constitution, and Susie's parents threaten to sue the school for not better protecting their child. The school expels Eric after holding a disciplinary hearing, but failed to consider any other kind of sanction apart from expulsion.

This is the only public school in the area – there is another private school nearby but Eric's single mother cannot afford to send him there – and Eric is no longer able to attend school.

As a compromise, Susie's parents suggest that they will be satisfied if Eric gets 6 lashes with a ruler. In addition, they want the following measures to be put in place: he cannot come near Susie so he must change classes; he is not allowed on the playground at lunch; he is not allowed to attend assembly; and he cannot participate in any school event where he may come into contact with Susie. They state that if these conditions are met he can come back to the school. The Headmaster says this would have been the appropriate action in his view, but points out that corporal punishment is not permitted because it is prohibited in terms of the Schools Act.

Eric's mom is so desperate for him to be in school that she agrees to the conditions set by Susie's parents including the corporal punishment and directs the school to carry it out on her behalf.

Eric disagrees with his mother and approaches an attorney who helps him to sue the school and the Department of Basic Education for punishing him by expelling him from school and then accepting him back but on conditions that severely infringe his rights to dignity, privacy, his best interests and his right not to be subject to cruel

inhuman and degrading punishment. He argues that all the actions taken by the school were unconstitutional and wants the court to re-admit him to the school. The school and Department of Basic Education defend the case on the basis that they had to take emergency action to protect Susie and all the other children at the school whose rights to be free from abuse and rights to dignity and security of the person were being infringed by Eric's bullying.

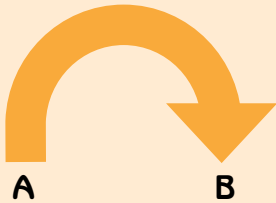
Identify the rights at issue here, both in terms of Eric's rights and the school's protection of the rights of other learners, including Susie.

SUMMARY

Social transformation is the changing of our society and the restructuring of our social behaviours, understandings and norms to make it better.

<u>PAST</u>	<u>PRESENT</u>	<u>FUTURE</u>
<ul style="list-style-type: none"> • Apartheid (Oppression of majority of black people) • No freedom • Lack of opportunities 	<ul style="list-style-type: none"> • Poverty • Unemployment • Poor service delivery • Corruption • Racism 	<ul style="list-style-type: none"> • Equality • Jobs • Freedom • Human Dignity

Just like the **Constitution** being the driving force behind **political transformation**, so too is the constitution the driving force behind **social transformation**, specifically the **Bill of Rights**.



POINT A: Where we have come from

Before our democracy in 1994 there was no Bill of Rights. Under the Apartheid system rights were abused, taken away and undermined, resulting in **gross human rights violations**.

POINT B: Where we are now

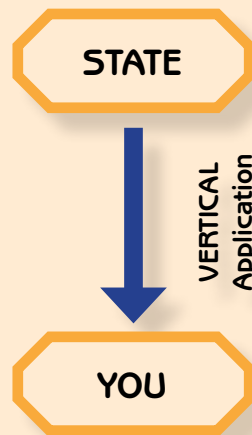
Because of the past, the writers of the Constitution made **human dignity**, **equality** and **freedom** the most important rights, as well as other rights needed to achieve these underlying values, listed in the **Bill of Rights**.

This **Bill of Rights** helps to change the perceptions of society and creates a new standard of norms: how to treat one another, what is and is not acceptable, and what we as a society strive for. Also, now that we have new standards, violations of these standards can be prosecuted, so we can hold each other and the government accountable.

But, it is you and me that are truly the driving force behind the change that we wish to see in the world. The Bill of Rights is merely a vehicle, but it is us who are the engines that give the force to move in a positive direction. We must adopt the norms in the Bill of Rights in our own lives and try to encourage those around us to respect and follow them.

A **negative right** is a guarantee by the state to NOT do something to you. For example, the state cannot put you in jail because of something you said or printed in the paper because of the freedom of expression.

Positive rights place obligations on the state to DO something for you. For example, our Constitution includes the right to education, something the state must provide to each of you as a learner.



Vertical application of rights protects people from the top-down. Since the state is the top, it protects us from the state.

Rights also protect you from the people around you, this is known as **horizontal application**. No other person can take away a right of yours. For example, if someone takes away your right safety and security, you can take action against them for the violation of your right.



A **Human right** is something that assigns responsibilities and entitlements to all people just because they are human. No one gives them to you, and no one can take them away. **The Bill of Rights**, found in Chapter 2 of the Constitution, lists the human rights that are to be enjoyed by all people in South Africa, no matter who you are.

Equality – All people are equal and must be treated equally.

Human Dignity – Your dignity must be respected and promoted.

Life – You have the right to life and for the government not to take away your life.

Freedom and Security – You can't be imprisoned without trial, tortured, or punished cruelly.

Slavery, Servitude and Forced Labour – You cannot be forced to work against your will.

Privacy – You can't be searched or have your home or possessions searched, without the proper procedures being followed by the police.

Freedom of Religion, Belief and Opinion – You can believe whatever you want and you can follow the religion of your choice.

Freedom of Expression – Everyone, including the press, may say, write or print photographs of whatever they want. But no one can use violence. Language which tries to get people to cause harm to other people because of their race, ethnicity, gender or religion is not allowed.

Assembly, Demonstration, Picket and Petition – You can hold a demonstration, picket and present a petition peacefully.

Freedom of Association – You can spend time with anyone you want to and join any organisation you choose.

Political Rights – You can form and support the political party of your choice. If you are a citizen, and are at least 18 years old, you can vote.

Citizenship – Your citizenship cannot be taken away from you.

Freedom of Movement and Residence – You can go and live anywhere in SA, and you can move around the country freely.

Freedom of Trade, Occupation and Profession – You can do whatever work you choose and you have the right to be treated fairly by your boss.

Children's Rights – Whenever a decision is made about a child, the decision-maker must consider the best interests of the child.

Labour Relations – You can join trade unions and go on strike.

Environment – You have the right to a clean and healthy environment.

Property – Your property can only be taken away from you in certain situations and the government pays you.

Housing – You have the right to access proper housing.

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Arrested, Detained and Accused Persons – People who are arrested, imprisoned, or accused of a crime have the right to be treated properly, to be given medicine and food and not to be harmed.

LESSON 6

Limitation of Rights

Name: _____ School: _____ Prepared By: _____

Overview & Purpose	Education Standards Addressed

	TEACHER GUIDE	PUPIL GUIDE	
Objectives			Materials Needed • None
Information			
Verification			Other Resources • None
Activity			

Introduction:

Section 7 of Chapter 2 of the Constitution sets out the importance of the Bill of Rights in South Africa, while Section 8 says that the Bill of Rights applies to ALL people in South Africa equally. This obviously makes sense, given our past, where only certain people were afforded certain rights depending on the colour of their skin.

**GROUP ACTIVITY****Exercise 1:**

So, everyone in South Africa has the right to freedom and security of person – S12 –, everyone has the right to privacy – S14 – and everyone has the right to freedom of expression – S16. No one can have these rights taken away from them, correct? Are there limits to this? What are they, if so? What about the person who has committed a crime and has been sentenced to jail, surely her right to freedom is being taken away? What about the person whose home has to be searched for evidence, surely his right to privacy is being violated? What about the person who makes a speech and it amounts to hate speech, surely her right to fully express herself is being taken away if she cannot say what she wants?

Divide learners into groups and allow them to briefly discuss these scenarios, Then give feedback from their discussions to the class.

Comments for TEACHING Fellows:

These rhetorical questions need to be posed to the learners and as a facilitator you need to encourage some sort of response from them. This can be a great discussion amongst yourself and the learners.

So is something wrong here? On the one hand, the Bill of Rights is saying that all people have access to all rights fully and equally, but now we can see that in fact there are certain situations when rights need to be violated or 'LIMITED'. But how can this possibly be allowed?

The answer to this important question can be found in section 36 of the Bill of Rights. This section is known as the limitations clause. This is probably one of the most important sections of the Constitution as it allows for the justifiable violation of certain rights. By justifiable, it means that the violation can be allowed / rights can be limited, because there is a good reason to do it. Why is this necessary?

Where there are many people living together in society, and each has the same rights as the next person, those rights will come into conflict with each other. There needs to be a way to resolve those conflicts, and this section provides that way.

Let us read Section 36.

Section 36 – Limitation of Rights

The rights in the Bill of Rights may only be limited in terms of a 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 right*
- 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*

Basically, what this sections means is that any right in the Bill of Rights may be limited or taken away if there is a good enough reason to do it. In other words, almost NO right is 100% safe from a justifiable violation. (The exception is the right to life and the right to human dignity.) This is a very important tool for the courts as it allows them to balance competing rights and interests.

Now this seems very complicated but in fact it is not. We are going to break down this section to understand it fully. This section can be broken down into two parts:

First: *the 'The rights in the Bill of Rights may only be limited in terms of a law of general application' and* **Second:** *'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.'*

Law of General Application

This limitation of rights only applies to laws of general application. A law of general application is a law that applies to everyone, or to a group of people, equally. In other words, all the laws of our country are laws of general application. For example, the law that states that murder is illegal and that if one is found guilty of murder one may be sentenced to a term in prison is a law of general application as it applies to ALL South Africans. If this law applied only to Afrikaner males between 40 and 50 years, it would clearly NOT be a law of general application as it would selectively apply to only one group of people, and therefore be considered discriminatory. It is also discrimination on one of the listed grounds (ie race).

An example of a law of general application that does apply to a specific group of people is the Children's Act. Even though this act applies only to children, it applies to all children in South Africa in the same way and does not discriminate against any group of people or deny equal protection or benefit of the law.

The next important question is WHO can limit your rights? What happens if I, as a law abiding South African citizen, see you murder someone and then lock you up in a cell that I have made in my basement for 20 years as your punishment? Why can't I limit that person's right to freedom? Only the state should have the power to justifiably limit another person's right even though this does not mean that the state can always justifiably violate one's right. This reason is to prevent people taking the law into their own hands as well as instilling the concept of social transformation, that no one should take another person's right away no matter how justified they are or no matter how strong a reason they think they have to limit another person's rights. That is the power of the state and should remain with the state.

The limitation is reasonable and justifiable in an open and democratic society

This is the second step to see if a right can be limited or justifiably violated. The first step is to see whether we can continue to this step where we evaluate whether that certain limitation or violation is acceptable.

This second part asks whether the limitation or violation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. Once again we see these three very important rights coming in. What this step of the limitation analysis is asking is whether it would make sense, whether there is a good reason and whether it would be OK to violate a certain right in our society where human dignity, equality and freedom are so important. This is where the court has to weigh up a number of factors to see if a right can be justifiably limited.



GROUP ACTIVITY

Exercise 2:

Have you ever heard of 'Lady Justice'? This is a proverbial character signifying the law and our justice system. It is an image that is used to help us to think about how the law and our justice system works. In Lady Justice's hand she holds scales. These are called the Scales of Justice. These scales are used to show that in law there are always at least two sides to every story and it is important to weigh the different arguments in each case. Section 36 are these scales of justice and are used to weigh up the argument for whether a right can be justifiably violated or not.

Comments for TEACHING Fellows:

Pass around a photo of lady justice and draw picture below on the board.



This is Section 36 and is used to weigh up whether a right can be justifiably limited in terms of Section 36. In other words, to decide whether it can be shown to be just and right to limit a right. In order to make this decision there are 5 factors, or questions, that are asked in order to come to the particular conclusion. These 5 factors or questions include the evaluation of:

- a. *The nature of the right*
- b. *The importance of the purpose of the right*
- 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*

Comments for TEACHING Fellows:

The best way to understand the limitation of rights is to use examples. Below is an actual case study. Explain this case to your learners like you are telling a story. Let them know that this is something that actually did happen.

CASE STUDY

Christian Education South Africa v. Minister of Education

The association of 196 independent Christian schools brought a complaint before the Constitutional Court alleging that a law prohibiting corporal punishment in schools limits the religious rights of parents who have children in independent schools to consent to corporal “correction” based on their religious beliefs. The association asserted that corporal correction in schools was a key tenet of Christianity, and that the outright prohibition of corporal punishment in all schools infringed on individuals’, parents’, and community rights to practice their religion.

The Constitutional Court, however, found that the state can lawfully prohibit corporal punishment in schools. The Court banned corporal punishment in schools to protect children from abuse and to protect the dignity of children as well as their right to be free from all forms of violence. Importantly, parents did not have to disobey the law in order to follow their religious beliefs because they could still discipline their children in their homes. The law only prevented parents from giving teachers permission to discipline pupils.

We can see in this case that the parents were concerned that the prohibition on their ability to discipline their children in school amounted to a violation of their right to freedom of religion – S15. Let us now do the two step analysis to find out how the courts arrived at their conclusion.



GROUP ACTIVITY

Exercise 3:

Step 1: Law of General Application

Christian Education South Africa was challenging the law that prohibited corporal punishment in schools. In other words the law said that corporal punishment (for example, hitting learners) is not allowed. We can see that this law prohibited corporal punishment generally or in ALL schools across the country. Therefore, it can be seen that this law IS a law of general application and is capable of being limiting or justifiably violating the right to freedom of religion

Step 2: Reasonable and Justifiable in an Open and Democratic Society We now need to evaluate if such a limitation or violation is indeed justifiable, in other words if there is a good reason to limit the right. Before we can evaluate this we need to understand a couple of important concepts:

- 1) The limitation is the same thing as the law violating the right. So in this example the limitation is the law prohibiting corporal punishment at schools.
- 2) The purpose of the limitation is the purpose or underlying reason for the law. So it is the purpose for prohibiting corporal punishment at school. The court in this example found that the right to freedom of religion was justifiably violated, and that even though their right to freedom of religion may be infringed, it is for a just and reasonable cause based on our democratic society.

Now let's try a hypothetical exercise that will hopefully test the knowledge you have acquired about the limitation of rights.

Continued...

Divide the class in two. Half the class must be seated on the one side, Group A, and the other on the other side, Group B. This is a hypothetical example (it is a set of made up facts). This is just to exercise the process of how the Constitutional Court would approach the limitations analysis.

Group A: A farming community living on the banks of a river. The river is their life source and without it the community, along with all their produce, would die.

Group B: Workers in a factory pump toxic waste into a river upstream from Group A.

Facts:

For years Group A has lived on the banks of the river. The water is the group's life source and livelihood, but recently the pollution levels in the river have started to rise. This increase in pollution is due to the increase and accumulation (or build-up) of toxic waste dumping in the river. As a result of this increase in pollution, Group A's cattle, crops and people have become sick and are starting to die. Members of Group A approach the local legislature (or government office) and plead their case before it, highlighting that if dumping does not stop or is reduced the entire community will be wiped out!

Rather concerned at Group A's plight, the local legislature pass a law that states: *"All dumping of toxic waste into the river must be reduced by 50%"*

Continued...

Group B approaches the local legislature to oppose this law saying that reducing river dumping by 50% means it would need to cut productivity down by 50%(meaning that they will be able to do less work) and thus 50% of the factory staff would lose their jobs.

Group B states its Section 22 right to freedom of trade, occupation and profession is being infringed or violated by this new law.

Group A on the other hand maintains that this law is imperative or important for the safety and continuity of their community. Group B approaches the Constitutional Court and challenges the validity of this new law that allegedly violates its right to freedom of trade, occupation and profession.

We can see here that there is a violation of a right. S22 IS being violated. This new law is saying that 50% will lose your right to trade and occupation. What the Constitutional Court now needs to do is to see whether or not this violation is JUSTIFIABLE or NOT. To figure this out we are going to have to do the 2 step analysis.

Step 1: Law of General Application

Does this problem even qualify for the S36 analysis? If so why? We can see here that the law IS a law of general application. It applies generally and equally to ALL those who are dumping toxic waste into the river. It does not single out Group B in particular. Therefore it can be seen that the new law is a law of general application and so we can move on to step 2.

Continued...


Step 2: Reasonable and Justifiable in an Open and Democratic Society Now we need to see if this violation is in fact justifiable in our open and democratic society based on human dignity, equality and freedom. To do this we need to consider the 5 factors and use the 'scales of justice'.

Comments for TEACHING Fellows:

For this exercise you are going to leave the problem solely in the learner's hands. You will obviously guide and mentor them through the problem, but try to let them understand the complexity of this problem and the need for a S36 analysis.

Remember that this is a hypothetical example and thus either side would be seen to be correct. Try letting the creativity of the learners flow and posing questions to reasoning in order for them to really substantiate their argumentation. You do not have to go through the detailed analysis below with your learners. Only do so if you think that it will help in their understanding of limitation of rights.

	Justifiable Violation of S22	Unjustifiable Violation of S22
<p>a) Nature of the Right</p> <p>Freedom of trade and occupation is a very important right as it protects our economic situation and the financial situations of those who have jobs or wish to work. As unemployment is a major issue in this country, jobs and the right to work need to be protected. Therefore this violation needs to be more heavily justified in order to be violated.</p>		✓
<p>b) Importance of the purpose of the limitation</p> <p>The purpose of the limitation is to protect the community of Group A. The limitation is the new law and the reason for the new law is to cut toxic river dumping by 50%. This is a very important purpose seeing that the lives and livelihood of Group A depends on it.</p>	✓	

<p>c) The nature and extent of the limitation</p> <p>This is where the class can really get involved. Is a 50% cut in emission, which indirectly leads to a 50% job cut, really very extensive?</p> <p>It is surely less extensive than a 75% or 100% cut, but still quite massive. Discuss.</p>		
<p>d) The relation between the limitation and its purpose</p> <p>The limitation is the law itself and the purpose is to protect the community of Group A. We need to establish whether the law actually has the effect of achieving its purpose. It could possibly be seen that it is a good method of achieving its purpose, but this can be left up to the learners.</p>		
<p>e) Less restrictive means to achieve the purpose</p> <p>This is also a strong arguing point for the different learner groups. Group A could argue that there is no less restrictive means to achieve the</p>		

<p>detox, but Group B could argue that this law is too harsh as they could, instead of dumping in the river, bury the toxic waste, or shoot it to the moon! This would have little effect on the right to trade as no jobs would be lost as they would not have to lower productivity. Again this is up for discussion.</p>	
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You can then conclude, either way, that in fact the violation of S22 is justified or unjustified. Once you have drawn a conclusion then you need to explain the certain remedies that would follow either ruling. If it were justified, then the law would stand and Group B would have to cut toxic dumping by 50%, but if it were unjustified, then the law would be ruled as unconstitutional and struck down which would make it invalid.

The limitation of rights can be complicated; however, if you present this hypothetical and the case study correctly then it illustrates a very practical way of understanding it. You need to emphasise the importance of such a right – S36 – as it allows for justice to be fulfilled. If a suspect has information in their home that can help in convicting a murderer, then her right to privacy can be violated in terms of our open and democratic society. If someone engages in hate speech, his right to freedom of expression can be limited or violated in terms of our open and democratic society based on human dignity, equality and freedom. In other words, all rights are afforded to each person equally and fully, HOWEVER, there may come a time when your right can be violated in order to achieve the objectives of our open and democratic society based on human dignity, equality and freedom.

Question:

Do you think there are circumstances in which it would be acceptable to limit the rights to human dignity, equality and freedom?

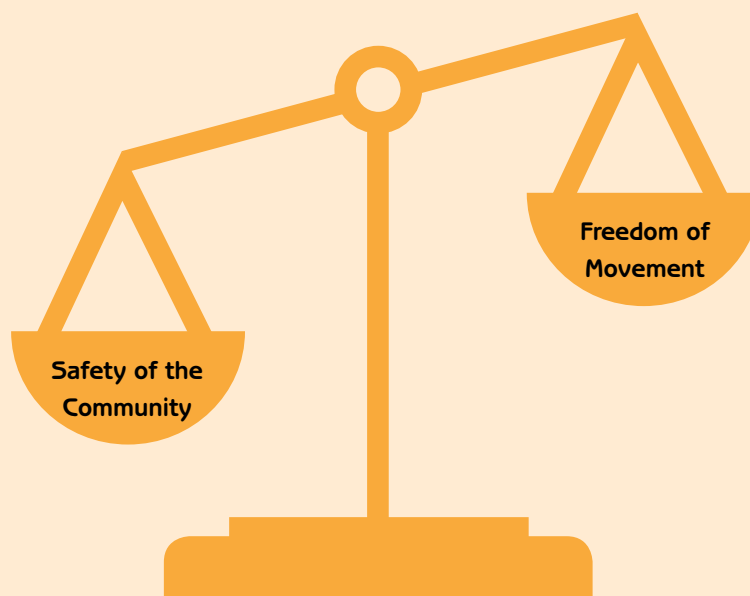
SUMMARY

Although the Bill of Rights sets out rights for all people, sometimes these rights can be **limited** if there is a good reason to do so and when different rights come into conflict with each other.

The **limitations clause**, in Section 36 of the Constitution, allows for the justifiable violation of certain rights. This means that there is a good reason to limit a right. For a right to be limited it must:

- 1) Be a **law of general application** (a law that applies to everyone or a group of people equally)
- 2) Be reasonable and justifiable in an open and democratic society considering relevant factors:
 - a. *The nature of the right*
 - b. *The importance of the purpose of the right*
 - c. *The nature and extent of the limitation*
 - d. *The relation between the limitation and its purpose; and e. Least restrictive means to achieve the purpose*

This two-step process allows for the courts to limit rights when it is necessary for society, for example limiting the freedom of movement of a person convicted of a crime for the purpose of the safety of the community.



LESSON 7

Human Dignity & Right to Life

Name: _____ School: _____ Prepared By: _____

Overview & Purpose	Education Standards Addressed

	TEACHER GUIDE	PUPIL GUIDE	
Objectives (Specify skills / information that will be learned.)			Materials Needed • <i>Paper</i> • <i>Pencil</i>
Information (Give and / or demonstrate necessary information)			
Verification (Steps to check for pupil understanding)			Other Resources • <i>None</i>
Activity (Describe the independent activity to reinforce this lesson)			

Introduction:

As previously discussed, human dignity is considered one of the most important rights in the Bill of Rights (recall Section 7). Let us explore this concept of human dignity.

Comments for TEACHING Fellows:

You can use the attached article on access to water to ask your learners if they think that this problem is related to human dignity or not. In your preparation for this lesson you are also encouraged to go through your local newspaper and see if you can find any current articles related to human dignity.

Human Dignity

One of the most important rights in the Constitution is the right to human dignity. Human dignity is not only a right but it is also the common thread that runs through the entire Constitution as every single other right in the Constitution is linked to human dignity in some way. In other words human dignity is said to be the underlying foundation of every right.

For example, if we look at the rights to housing, food, water and health care, the reason these rights were created was that the writers of the Constitution felt that these were the minimum necessities that a person needs to live a dignified life. So if a person's right to water is denied, her human dignity will also be violated.

The very first thing that the Constitution says under Section 1 is:

"The Republic of South Africa is a democratic state founded on the values of human dignity, the achievement of equality and the advancement of human rights and freedoms."

Section 10 of the Constitution sets out the Right to Dignity:

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

From this we can see that what the Constitution and specifically the Bill of Rights are trying to do is to give effect to human dignity. So human dignity can be seen as the source from which all other rights flow.

CASE STUDY

GROUNDUP: 'WOLWERIVIER WITHOUT RUNNING WATER, AS RESIDENTS BATTLE FIERCE HEATWAVE'

21 JAN 2016 01:24 (SOUTH AFRICA)

Drought, coupled with intense heat is draining communities in parts of the Western Cape. Residents complain that water supply was turned off without notice, and they were not sure that the water trucked in was safe for consumption. By ASHLEIGH FURLONG for GROUNDUP.

Since Sunday, Wolwerivier residents have been without running water in the midst of a fierce heatwave across Cape Town. The streets are empty as people take shelter in their homes from the burning heat. Inside the houses, children sleep on the floor and dishes pile up at the sink as every drop of water is saved. A water truck has been bringing water and residents have been queuing at the truck with all the containers they can find, said Ntombomzi Mshumi. She has three children and on Monday morning she had to bath two of them in one bucket, she said. She said she had heard that the large water tank on the outskirts of the settlement was empty. "I'm hoping it rains soon," she said. "We need the rain." Mshumi said residents had to queue at the water truck. Residents said the water had been turned off without warning.

Busi Mbixane said on Monday she had gone to buy water at the supermarket for her three-month-old child in case the water in the truck was not clean enough for a baby's bottle. Another resident, Asavela Ndinisa, said the lack of water was affecting everyone "a lot". The children at the crèche in Wolwerivier had been cooling down in a small plastic pool, but the lack of water was difficult to deal with, especially in the heatwave, said Daniel Utama, a volunteer at the centre. When GroundUp visited Wolwerivier it seemed as if water under minimal pressure was beginning to flow from some taps in an area where few houses are occupied.

Councillor Benedicta van Minnen, the City of Cape Town's Mayoral Committee Member for Human Settlements, said the problem had been brought to the City's attention on Monday afternoon.

"The City is working hard to resolve the water supply issue as quickly as possible. In the meantime, contingency plans have been put in place to ensure that the residents have access to water," she said in a brief response. **DM**

Questions to guide discussion of article:

- 1) How do you think that having clean running water is linked to Human Dignity?
- 2) Whose responsibility is it to provide us with water?
- 3) Should we have to pay for water?
- 4) Are any other rights affected when people do not have access to water?

**GROUP ACTIVITY****Exercise 1:**

BUT, what is human dignity? We know that human dignity is the most important and protected of all rights, but what is human dignity?

This question needs to be posed to the class. Ask the class to take a minute and each write down what human dignity means to them. Then select about 5 pupils and ask them to share what they have written.

Students are often reluctant to answer this question since it is so ambiguous and often quite private, but don't budge until you get 5 different conceptions of personal human dignity. This is a good illustration of how diverse and complex this right is.

What makes dignity one of the most interesting rights is that unlike a lot of the other rights, the Constitutional Court has not defined what dignity means. A lot of other rights have been clearly defined. You will see, for example, when you learn about freedom of expression that there are clear types of expression that are protected by the Constitution and others which are not.

But the courts have a good reason for not defining human dignity. The right to human dignity is SO important that the Constitutional Court did not want to put it in a box and have a check list of what it can and cannot be. And from the exercise we've just done you can see that dignity means different things to different people, so one uniform definition is impossible.

An example of this concept can be seen as follows:

Suppose your teacher says to you: "If you do well in class then you will get a gold star". Here the teacher has chosen to keep the definition of 'good' open and broad. So being 'good' could mean doing well in a test, picking up litter, keeping your desk tidy or being polite to your peers. By broadly defining the word 'good' it allows the teacher to reward gold stars for a variety of good behaviours, not just good marks. The Constitutional Court has done the same thing with the definition of human dignity. By broadly defining it, they can allow many factors to fall inside of it, thus allowing it to apply to as many people as possible.

While it is not a definition, dignity can be understood as the intrinsic (built-in) worth and value of all human beings. So the right to human dignity is the **right of every person to be treated with the same respect and concern for their inherent worth as a human being** (this broad definition of human dignity is quite important to stress).



GROUP ACTIVITY

Exercise 2:

Ask the class if any of them have a word in their home language that corresponds to human dignity.

Question: Why do you think human dignity is so important?

Comments for TEACHING Fellows:

First give learners the opportunity to respond to this question and then offer your response.

The reason that dignity is so important and mentioned so many times in the Constitution is because under Apartheid it was the most denied and abused of all rights. Most of the laws under Apartheid were gross violations of human dignity. Human dignity was the one thing that was systematically abused, denied and violated. The writers of the Constitution sought to undo, or transform, the injustices of our past and make human dignity one of the most important and sacred right.

Right to Life & The Death Penalty

Section 11 of the Constitution states:

"Everyone has the right to life"

The right to life and human dignity are very closely linked so as we look at the right to life I want you to keep in mind the things that we have just discussed and learnt about dignity.

The right to life can be seen to be one of, if not the most, important rights in the Bill of Rights. This must seem obvious, since without life, how can one have any other right in the Bill of Rights? Therefore it can be seen that by taking one's life it is the ultimate violation of their human dignity and all other rights in the Bill of Rights, but we as South Africans don't often see life as the most important thing.



GROUP ACTIVITY

Exercise 3:

This exercise is incredibly effective, if not the most effective, way of reaching those who are proponents of the death penalty and helping to change their perceptions on the matter.

This example will see the asking of 3 questions, and responses by a show of hands will be tallied.

Question 1: Who thinks that by killing someone you are respecting their human dignity?

The response to this should be a resounding NO from the class and thus 0% of the class.

0

Question 2: Who thinks that by killing someone who has killed another person you are respecting their human dignity?

The response should be a few hands if that. Whatever the count write that number on the board.

0

?

Question 3: Who believes in the death penalty?

Note the number of learners who raise their hands.



GROUP ACTIVITY

Exercise 4:

From here you need to draw a line down the middle of your board. On the one side those FOR the death penalty and on the other, those AGAINST.

Ask again, who believes in the death penalty.

FOR AGAINST

Now a debate can rage as to the different points and arguments from both sides. Be the facilitator of this debate, playing devil's advocate if need be.

This exercise leads beautifully into **S v Makwanyane**.

CASE STUDY

In the very first case the Constitutional Court heard the judges had to decide the exact same question you just answered. In the case of *The State v Makwanyane* the court had to decide if the death penalty was constitutional.

Facts: In this case, a man had been sentenced to the death penalty for killing someone. He then approached the Constitutional Court saying that the death penalty infringed his rights to life and dignity.

Reasoning: The court said the rights to life and dignity were the most important of all rights in the Constitution. The right to life is also unqualified in the constitution, this means the right to life is given strong protection in our law and it cannot be qualified to say that certain people, in certain situations can be deprived of their right to life. This is because the right to life vests in every person, regardless of their actions. So just because a person has been convicted of a horrible crime it does not mean that they forfeit their constitutional rights.

In the case of *Makwanyane* the court didn't only look at the right to life they also looked at the right to human dignity. They said that dignity is the source of all other rights in the Bill of Rights. So since dignity is the source of the right to life, to deny someone the right to life would also infringe their right to dignity.

The court's final decision was made up by many factors. Firstly, and most obviously, to kill someone deprives them of their right to life. And secondly, the court also said that the death penalty was a form of cruel, inhumane and degrading punishment which infringed human dignity. Because the death penalty infringes human dignity it cannot be justified under the limitation clause like, as we saw in the example earlier, imprisonment can be. Because the death penalty was an annihilation of human dignity it was held that the death penalty was unconstitutional.

Can you see that the rights to life and dignity are linked and you can't have the one without the other? One of the judges said that the right to life is more than just the right to exist & be alive, it is a right to be treated as a human being with dignity. Without dignity human life is substantially diminished. And without life there can be no dignity. So as long as our Constitution remains and we have a right to dignity and life it can never be ok to kill another person, no matter what they have done.

From that day on the death penalty was abolished and will remain so in our country as long as the Constitution is the supreme power in our land.



GROUP ACTIVITY

Exercise 5:

This class exercise is to illustrate Human Dignity in a more common setting, one that the learners can relate too.

Question:

What do you think about Corporal Punishment?

Lead the discussion in the direction of one that will explore how corporal punishment affects the learners' Human Dignity. Ask them how they would feel if they had to learn in a school that believed in corporal punishment.

Try to tie in the feelings around corporal punishment in respect to human dignity and the lesson as a whole. Let the learners explore their own experiences and attitude toward human dignity by using this very real and localized example.

CASE STUDY (Read and Discuss)

Minister says 'no' to death penalty

(Cape Times 13 February 2013)

Bredasdorp – A call for special courts that deal only with cases of abuse of women and children has been made by Women and Children Minister Lulu Xingwana.

Speaking outside the Bredasdorp Magistrate's Court on Tuesday where two men accused of the rape and murder of 17-year-old Anene Booysen appeared before magistrate Graham Cupido, Xingwana dismissed calls to reinstate the death penalty for rapists.

The death penalty was against South Africa's democratic values, she said. "It is against our ethos of human rights. We believe in the human rights of all people and believe the courts are the body that should be given the authority to ensure the law takes its course."

She said, however, that there should be no bail for the suspects and called for the maximum sentence "for a heinous crime".

"I am shocked... that they cover their faces. From whom are they hiding?" she said...

"Gender-based violence robs women of the opportunity to become productive citizens of the country. It denies them their constitutional right to safety and condemns them to a life of perpetual fear," she said.

...

Questions to guide discussion of article:

- 1) What are the other ways that people who commit serious crimes can be punished, in a way that does not infringe their Human Dignity?
- 2) How can we address the broader issues in society that influence crime and ensure that we protect the rights and dignity of all people?
- 3) Do you think that people who commit crime should be reintegrated into their communities?



CASE STUDY

REVIEW AND DISCUSS WITH LEARNERS THEIR VIEWS.

#1: Corporal punishment still in schools

(The Beeld, 20 April 2011)

Corporal punishment is still common in South African schools even though it was banned more than a decade ago. Recent research showed that up to 70% of primary school and 50% of high school pupils were still subjected to corporal punishment...

The study showed that teachers were well-informed about the consequences should they administer corporal punishment. They felt, however, it was acceptable if done reasonably.

They were frustrated and believed corporal punishment was an effective way of maintaining discipline in over-crowded classrooms. Many still viewed it as an effective "classroom aid".

The research showed some of the teachers didn't think other methods of discipline were as successful as corporal punishment. Some of them had tried other methods but had limited success with them. Teachers also believed the department's poor support on how alternatives for corporal punishment should be applied, contributed to the ineffectiveness of these methods.

They claimed the abolishment of corporal punishment was forced on them too quickly while they were not trained in other methods. The teachers said they were not consulted when corporal punishment was scrapped in schools.

Questions to guide discussion of article:

- 1) What are other possible ways of instilling discipline in learners?
- 2) Why do you think that corporal punishment is harmful?

#2: Corporal Punishment and Bullying: The Rights of Learners (excerpt from Corporal Punishment & Bullying Booklet, by Salim Vally, Education Rights Project)

During the apartheid years the system of 'Bantu Education' and 'Christian National Education' was designed to support apartheid by schooling children to become passive citizens who would accept authority, social injustice, and inequity unquestioningly. Educators were encouraged and supported in the use of caning children during the apartheid regime as a means of subjugating them. Beating children in a society so familiar with oppression and violence was taken for granted. Over time, the practice of corporal punishment became deeply embedded in the fabric of our society.

For many learners today, violence remains a regular part of their school experience. Corporal punishment is still sometimes used routinely to punish children even for poor academic performance, having an unclean uniform, or to discipline. Failure to protect learners from any form of violence denies them not only their right but also their ability to enjoy and fully experience their education and academic success.

Corporal punishment involves a deliberate act that inflicts pain or physical discomfort in order to punish someone. Corporal punishment can include hitting with a hand or an object such as a cane, belt, strap, shoe, or ruler. Corporal punishment may involve slapping, kicking, punching, shaking, burning, pinching or pulling hair; forcing someone to stand in a physically uncomfortable, emotionally humiliating or undignified position; denying or restricting someone's use of the toilet; denying food, fluids/drinks, heat and shelter as a form of punishment; forcing someone to do excessive exercise.

Some educators and parents have substituted physical punishment with emotional humiliation. Strategies based upon humiliation and removal of self-respect are not effective or appropriate alternatives to physical punishment and also cause damage to the child or learner.

Corporal punishment has been declared illegal in South Africa but based upon our reports of numerous incidents of violence towards children by educators in the schools we must ask ourselves is this law being enforced, monitored or regulated?

Discussion: What is the difference between punishment and discipline?

SUMMARY

Human Dignity

A central value the Constitution is **human dignity**; it is the underlying objective of every right.

For example, the rights to housing, food, water and health care were included because the writers of the Constitution felt that these were the minimum necessities a person needs to live a dignified life.

The very first thing that the Constitution says under Section 1 is:

"The Republic of South Africa is a democratic state founded on the values of human dignity, the achievement of equality and the advancement of human rights and freedoms."

The Constitutional Court has not defined what dignity means, and it has not done so with good reason. Definitions limit what things can mean, and they do not want to limit the right's definition to just one interpretation of what human dignity is.

While it is not a definition, dignity can be understood as the intrinsic or "built-in" value of all human beings – the **right of every person to be treated with the same respect and concern for their inherent worth as a human being**.

The reason that dignity is so important and mentioned so many times in the Constitution is because under Apartheid it was the most denied and abused of all rights. The writers of the constitution sought to undo, or transform, the injustices of our past and make human dignity the most important and sacred right.

Right to Life & The Death Penalty

Section 11 of the Constitution states:

"Everyone has the right to life."

The right to life is one of the most important rights in the Bill of Rights. After all without life, how can one have any other right in the Bill of Rights? We do not have the death penalty in South Africa because taking a life is seen as the ultimate violation of human dignity. In 1995, the Constitutional Court held that the death penalty was unconstitutional in the case called *S v Makwanyane*.

LESSON 8

Introduction to Equality

Name: _____ School: _____ Prepared By: _____

Overview & Purpose	Education Standards Addressed

	TEACHER GUIDE	PUPIL GUIDE	
Objectives (Specify skills / information that will be learned.)			Materials Needed • <i>None</i>
Information (Give and / or demonstrate necessary information)			
Verification (Steps to check for pupil understanding)			Other Resources • <i>None</i>
Activity (Describe the independent activity to reinforce this lesson)			

Recall Section 7 of the Bill of Rights which points out that human dignity, equality and freedom are the most important values underlying the whole Constitution. We have dealt with human dignity, so now we move onto equality. Further showing the importance of equality, Section 9, the right to equality, is the very first right listed in the Bill of Rights. It says:

“(1) everyone is equal before the law and has the right to equal protection and benefit of the law

(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)”

But, equality nowadays had become a buzz word, catch phrase almost for transformation and the ever striving goal of this country. To some it incites hope and aspiration, yet for others it invokes fear and frustration. On the whole equality in this country is, surprisingly, misunderstood yet widely preached. Let’s investigate, shall we...



GROUP ACTIVITY

Exercise 1:

Ask class: What do you think inequality means?
How do you see equality and inequality in the relationships around you?

Most probably the answer will be that everyone is equal and must be treated the same. Even though this is the 'obvious' answer, it is a misnomer as will be pointed out in the following explanation.

Example: Pick 2 people in the class. You have one person who earns R400 million a year and another who earns R400 a year, then pose this question to the class: should they have to pay the same amount of tax?

The response will be an overwhelming no.

Ask class: If our conception of equality is that all people are the same and should be treated equally then surely these two people should be paying the same amount of tax?

So you can see that the right to equality is not as straight forward as you might think. In fact, in our country, equality does NOT mean everyone is to be treated equally as this is impossible.

How the Constitutional Court has interpreted equality under Section 9 has three aspects:

- 1) **Similar people**
- 2) **Who are similarly situated**
- 3) **Should be treated similarly**

What this does is ensures that while you may treat certain people differently, the outcome is equal and fair. So if you go back to our tax example, the person earning R400 million is not similarly situated to the person earning R400 a year. Therefore they do NOT need to be similarly treated and pay the same tax. Because these two people are unequal to begin with it would be unfair to treat them equally. This interpretation by the Constitutional Court is very important as it allows for a sense of equality in our country.

The political and legal systems during Apartheid were based on inequality. In order to ensure that the same injustices do not occur again and to level out the legacy of inequality, the achievement of equality is one of the main focal points of the Constitution.

In addition to making right the wrongs of South Africa's past, equality is also important on a more basic human level: No person is inherently better than anyone else, thus all people should have access to the same rights and opportunities.

You might be thinking at this point why do we see so much inequality every day when we have a right to equality. It is important to keep in mind that there is a difference between the concept of a right to equality and how it should work in society and that right being fulfilled and realised. Today we're looking at the content of the right to equality in law and not how well or not our country implements measures to achieve equality.



GROUP ACTIVITY

Exercise 2:

This is a good example of the process the Constitutional Court follows in making decisions in equality cases.

The hypothetical begins as follows:

Pick a person in the class to volunteer; this person will be HIV+. The second person will be a company employer. Build the scenario where the person with HIV is perfectly qualified for the job. Everything is going well at the interview when the employer asks if there are any medical issues that he/she should know about. At this question the person with HIV replies yes, and explains their medical history. On learning about their HIV status, the employer informs him/her that they have a strict company policy that prohibits the employment of HIV+ people.

Now obviously this can be seen to be unfair. The person with HIV approached the Constitutional Court to challenge the company policy of not hiring HIV+ applicants.

Comments for TEACHING Fellows:

This is a good point to briefly explain the difference between differentiation and discrimination without getting too technical.

There is a difference between discriminating against people and merely differentiating between them.

- 1) **Differentiation:** this is when treating people differently does not deny equal protection or benefit of the law or does not amount to a violation of the right to equal treatment under the law as the differentiation has a legitimate government purpose.

For example: Take a soccer team which differentiates between a player who plays well and one who does not by choosing the one who plays well. This does not deny equal protection or benefit under the law and is linked to a legitimate purpose.

- 2) **Discrimination:** is differentiation on illegitimate grounds. It means treating people differently in a way that impairs their fundamental dignity as human beings.

If the discrimination is based on any one of the following listed grounds it is presumed to be unfair – race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

Exercise 2 Continued...

After you have explained the difference between differentiation and discrimination, pose the following question to your learners:

What if the person with HIV was a doctor or nurse and they were applying to a hospital instead of a company. Would there be a reason for having a company policy then? Would it make sense and thus be fair to discriminate between those doctors with and without HIV?

Once you have gained a response from this then explain the difference between fair and unfair discrimination.

Comments for TEACHING Fellows:

You will now go through a case of fair discrimination with the class. This is the case of President of the Republic of South Africa v Hugo. First describe the facts of the case to the class. Then break them into small groups and allow them to discuss what they think the outcome should be. Once they have done this they can give feedback to the bigger group. Let the class do most of the talking with you only guiding them from time to time. Many people in the class are going to have differing opinions so don't be afraid to let them voice them.



GROUP ACTIVITY

Exercise 3:

Facts: In 1994, President Nelson Mandela granted a remission of sentence (reducing time to be spent in prison) to all mothers who were in prison at that time and had children under the age of 12 years. Hugo was a prisoner who was the father of a child under 12 and he argued that the president's order unfairly discriminated against him on the grounds of gender. Break the class into groups and ask them to discuss whether they agree that Mr Hugo was discriminated against.

Once you have received feedback from the groups briefly explain how the court came to their decision.

Continued...

The court decided that the president's order discriminated against prisoners on the ground of sex. In answering the question whether the discrimination was unfair, the Constitutional Court decided that the discrimination was fair. The below factors helped the court to make their decision: Women have previously been treated unequally in society. Mothers are also primarily responsible in our society for raising and nurturing children. This burden of raising children can be seen as one of the root causes of women's inequality in society. For example, traditional roles such as raising children keep women out of the work place and women are often marginalised because of this. Men however, have not been previously discriminated against.

The nature of this discrimination is that it gives women an opportunity that it does not give men. So it technically doesn't take any rights away from men in prison. What it did was afford an opportunity to women because of their already unequal position in society and at the same time achieved a worthy societal goal.

The purpose of the President's order was to benefit minor children who were being disadvantaged by having their primary caretakers in prison. It was an act of mercy to benefit the most vulnerable group in society, the children. Children are severely disadvantaged by not having parents present to look after them. Also there are more men in prison than there are women, to release so many male prisoners would have led to a public outcry.

Continued...

There is no right in the Constitution that says prisoners should be released early, so the President's order didn't take away any rights to which male prisoners were entitled.

Fathers have not been historically discriminated against, and not allowing them early release from prison does not impair their sense of dignity as human beings.

The obvious conclusion is that fair discrimination exists and is absolutely essential in our democracy and essential to ensure GOOD judgments just like the Hugo case.

Equality is the main goal of South Africa, yet it is a slippery slope when we are dealing with people's emotions and opportunities. The Constitutional Court has struck a delicate balance between 'everybody is equal' and equality.

Comments for TEACHING Fellows:

Depending how the exercise goes you may need to summaries the outcome briefly with the class.



HOMEWORK ASSIGNMENT (Optional)

Divide the class in half and have the one half find an example of fair discrimination and write a short passage on why they believe it to be fair. Have the other half find an example of unfair discrimination and write a short passage on why they believe it to be unfair. In the next lesson have the students pair up (one fair discrimination and one unfair) and share the examples they have come up with. The students can then debate their findings between themselves and comment on whether they agree with their classmate's legal reasoning or not.

CASE STUDY 1

(READ AND DISCUSS WITH CLASS)

‘Three powerful myths that fuel xenophobia’

Beliefs that foreigners “steal” our jobs and drain services fuel xenophobia and inform government policy. LHR dissects three myths about SA migrants.

Stereotypes and myths have largely informed South Africans’ views on issues of migration and foreign nationals. These myths perpetuate xenophobia in South Africa and are used seemingly as a basis for policy decisions around migration.

Extensive research by institutions such as the Gauteng City- Region Observatory (GCRO) and African Centre for Migration and Society has gone a long way in dispelling these myths.

Yet, despite the coherent and unbiased statistics that have emerged from this research, the government is using incorrect assumptions and stereotypes as justification for migration-related policies and actions. This is manifest in arbitrary policing operations such as Operation Fiela-Reclaim, which focuses mainly on the arrest of thousands of foreign nationals under the guise of crime prevention.

Nongovernmental, non-profit organisation Lawyers for Human Rights (LHR) has been challenging these warrantless searches in court. They make it vitally important to address the myths clustered around xenophobia, and to create a space for debate and informed policy formulation... Myth 1: Foreigners want to live in South Africa “illegally”

David Cote and Jacob van Garderen

Operation Fiela-Reclaim has listed undocumented migrants as a priority area of the crime-fighting mandate issued by the inter-ministerial committee on migration. This has translated into police, army and immigration officials busting into people’s homes looking for “illegal immigrants” in the same way that they arrest and detain drug dealers and people in possession of illegal firearms.

The myth that this group is made up of “common criminals” is not only inaccurate but dangerously misleading. It places the blame for government’s inefficiencies squarely at the feet of those desperate for its protection and powerless to access it...

Myth 2: Foreigners are “stealing” our jobs

As a tool used in the heyday of apartheid, die swart gevaar or the “black threat” was enormously effective. The term was borne out of a carefully constructed, false National Party ideology aiming to firmly position and militarise white minds against the larger black population. The imprint of this ideology was so successful that in many ways it continues to dominate South African life. Most recently, we have seen it manifest itself as the “threat of the African foreigner”.

There is no evidence to suggest that foreigners dominate either the formal or informal employment sector... As little as 18% of informal business owners in Gauteng are foreign-born – a number that should be considered generous, given that Gauteng has the highest proportion of foreign workers in South Africa....

Myth 3: “They only come here to take our healthcare”

What this perception misses is the complexity of reasons that lead migration on our continent. For example, LHR frequently assists members of the lesbian, gay, bisexual, transgender and intersex (LGBTI) community who face persecution simply because their home country criminalises their sexual orientation, young mothers facing indiscriminate violence from Al Shabaab and child soldiers terrorised by Boko Haram. These are a few of the situations facing refugees who are desperate for South Africa’s protection through no fault of their own....

Nobody gets to choose whether they get sick. Should their status as non-nationals preclude them from life-saving treatment? Of course not...

Patricia Erasmus is head of the Refugee and Migrant Rights Programme at LHR

Questions to guide discussion of article:

- 1) What are the stereotypes or myths that you have heard about foreign nationals?
- 2) How can we challenge these myths?
- 3) Do you think that the way foreign nationals are treated impacts any other rights in the Bill of Rights?

CASE STUDY 2

(READ AND DISCUSS WITH CLASS)

‘South Africa needs to find a new way to talk about being gay’

The indigenous language IsiXhosa only refers to the LGBTI community in derogatory terms. We must find new words to articulate our sexual diversity, argues Lwando Scott.

Lwando Scott for HOLAA, part of the Guardian Africa network

(Tuesday 27 January 2015)

A few months ago I received an email asking my advice about the IsiXhosa language equivalents for gay, lesbian, bisexual, transgender and intersex.

But in IsiXhosa, an indigenous South African language spoken by 23% of the population, these words only exist in derogatory terms.

There is the ubiquitous “moffie”, an Afrikaans slang word meaning “faggot” or “acts like a girl.” Its origin is in Afrikaans but it’s used across all the South African languages.

The IsiXhosa word “talse” is also used to talk about people who are gender non-conforming, particularly men. This word means “hermaphrodite” and is often used as catch-all term...

Growing up it was clear from the way I looked that I was gay, but I had no language to talk about sexual identity until my late teens. There was no concrete articulation of being gay, and I have often struggled with terms like gay, lesbian, bisexual, transgender and intersex (LGBTI) in my mother tongue.

The words we use to talk about LGBTI issues and the terms we use to classify sexual identity come from the English language.

People use lesbian, gay, bisexual or transgender prefacing it with an “i” or “u”. So gay is then iGay (a gay) or uGay (he is gay), or iLesbian (a lesbian) or uyiLesbian (she is a lesbian).

But while words in the LGBTI acronym have no specific terms, the vernacular is used to describe what gay people “do”.

So, if I was to answer the question “what is a gay man?” I would say “umntuoyindodaothandanamananyeamadoda” which translates as “someone who likes or falls in love with other men”. There are multiple ways to talk about being gay by describing what the term means or what the person does.

People, who I would call homophobic, have often argued that absence of LGBTI terms in indigenous languages is evidence that homosexuality is a western import.

It is a complicated point that needs to be addressed carefully. While it is true that the terms gay, lesbian, bisexual, transgender and intersex stem from the English language, the absence of the words in IsiXhosa does not mean that there are no gay, lesbian, or transgender individuals amongst Xhosa people.

Questions to guide discussion of article:

- 1) Have you heard any of these derogatory words before? Do you think it is ok to use them? Why / why not?
- 2) Do you feel that you can speak openly about the topic of sexual orientation with your friends and family?
- 3) How would you respond to the argument that homosexuality is something from the west (or something imposed on people in Africa)?

SUMMARY

The **right to equality**, found in Section 9, is the very first right listed in the Bill of Rights:

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

The Constitutional Court has interpreted equality to mean:

- 1) **Similar people**
- 2) **who are similarly situated**
- 3) **should be treated similarly**

Section 9 says that individuals or the government may not unfairly discriminate against people. It allows for the government to classify people and treat them differently if they have a **legitimate, or good reason for doing so**. When people have been treated differently, the court’s job is to determine if it is fair or unfair.

Section 9 lists grounds (called illegitimate grounds) which the

government may NEVER discriminate on the basis of: race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

But sometimes, **differentiation** is legal if it is based on other grounds. Thus:

- 1) **Differentiation:** when treating people differently does not deny equal protection or benefit of the law or does not amount to a violation of the right to equal treatment under the law as the differentiation has a legitimate government purpose.

For example: a soccer team makes a distinction between a player who plays well and one who doesn’t play well by choosing the one who plays well to open the match. This does not deny equal protection or benefit under the law and is linked to a legitimate purpose – the team wants to win. The court always asks, is there a legitimate purpose for making a distinction?

- 2) **Discrimination:** is differentiation on illegitimate grounds. It means treating people differently in a way that impairs their fundamental dignity as human beings.

For example: if an employer chooses a male employee over a female employee just because he thinks a man will do a better job, this would be discrimination because there is no legitimate purpose to making this decision. Plus, gender is one of those grounds that will never be a legitimate basis to make a distinction.

Why is the protection of equality so important in South Africa? The political and legal systems during apartheid were based on inequality. In order to ensure that the same injustices do not occur again and to help overcome the inequality that remains to this day from apartheid, the achievement of equality is a priority in the Constitution.

In addition to making right the wrongs of South Africa's past, equality is also important on a more basic human level: No person is inherently better than anyone else, thus all people should have access to the same rights and opportunities.

You might be thinking at this point why we see so much inequality every day when we have a right to equality. It is important to keep in mind that there is a difference between the **right to equality** and the reality of how it works in society. We all have to play a part in making sure that right is actually being fulfilled and realised all around us.

LESSON 9

Intro to Social & Economic Rights

Name: _____ School: _____ Prepared By: _____

Overview & Purpose	Education Standards Addressed

	TEACHER GUIDE	PUPIL GUIDE	
Objectives			Materials Needed • None
Information			
Verification			Other Resources • None
Activity			

In one of our previous lessons on Social Transformation, we spoke about negative rights, which protect people from the state taking away or violating their rights, and positive rights, which place a duty on the state to provide certain rights to people. This lesson will be about socio-economic rights (SERs) which place positive duties on the state.

These rights can be found in Sections 26, 27, 28 and 29 of the Constitution.

Right of Access to Housing (s26)

- '(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'*

Healthcare, food, water and social security (s27)

- '(1) everyone has the right to have access to –*
 - a. healthcare services including reproductive healthcare;*
 - 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*

Section 28 constitutes a 'mini-charter' of children's rights and covers diverse issues such as civil and political rights, including the rights to a name and nationality (section 28(1)(a)); socio-economic rights, for instance the right to basic nutrition, shelter, basic health care services and social services (section 28(1)(c)); child justice (section 28(1)(g)).

Section 28 (2) sets out the best interests of the child standard:

- '(2) A child's best interests are of paramount importance in every matter concerning the child'*

Section 29 deals with the Right to Education:

'29(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'*



GROUP ACTIVITY

Exercise 1:

Choose a current topic relating to SERs (an example could be the long waiting list of people in need of government housing). Six learners must be chosen, who will be involved in a 10 minute dramatised café conversation between different role-players (i.e. government, community members and learners). All role-players must make use of props or dress up.

Learners should provide different perspectives on the topic to each other during the conversation. The activity should illustrate the difference between a positive and negative right.

Comments for TEACHING Fellows:

The purpose of the activity is for learners to practically engage in discussions around SERs using role play. This will aide in a better understanding of the topic. Questions should be posed to the "audience" about the difference between a positive and negative right.

To further illustrate to learners the difference between positive and negative rights, pose the following questions:

- 1) What does the government have to do for me to enjoy my Right to Freedom of Expression?
(Give the learners time to formulate a response)
 Basically there is not much that government is required to actively do. The government must mainly not interfere with the way I exercise my right to Freedom of Expression.
- 2) What does the government have to do for me to enjoy my Right of Access to Housing?
(Again give the learners time to formulate their response)
 The government has to put measures in place for me to access this right. This could be in the form of providing housing subsidies or building low cost housing. Here we can see that this right places many positive duties on government.

What are social and economic rights?

- SER place positive obligations on government - that means government must do something for the people of South Africa in order to fulfil our rights.
- The other rights we have discussed concern government's obligation to allow us to exercise our freedoms – such as the right to practice what we believe or protect our speech – but not to actually provide us with anything. So these rights place a different kind of responsibility on government.
- Sections 26 and 27 of the Constitution: right of access to health care services, adequate housing, sufficient food and water and social security. Section 28 enumerate a number of children's rights. Section 29
- guarantees a right to basic education. All of these are SERs. South Africa is praised all over the world for including these kinds of rights in its new Constitution, so this is something to be proud of. Most constitutions in the world do not contain such rights.

Why do we have such rights?

- Poverty is often a result of structural inequality, which means that people live in poverty as a result of circumstances into which they were born – it was not a choice they made. Particularly today in South Africa we are still living with the legacy of apartheid. Though we now have rights and freedoms, the impact of the apartheid laws and policies still keep many communities entrenched in poverty. As a result, it becomes the government's duty to help them.

- SERs are central to being able to realise other political rights. E.g. without food, it is difficult to realise freedom of expression, participation, etc.
- By allowing SER violations to be challenged in court, the government is making it known that they value these rights and individuals can enforce these rights in court.
- SER therefore protect people, and the courts have a duty to intervene when the government is not meeting its obligations.
- The government usually says it is meeting its SER obligations by creating laws that build housing and schools, but it is not enough to just have the laws – courts have said the government must also show that the laws are being implemented.
- The government is expected to take all reasonable measures to achieve the progressive realisation of these rights. In other words the government must be able to show that they are taking steps to make sure that all people in South Africa have access to these rights. A reasonable programme must provide for the needs of the most vulnerable.
- South Africa has the “**reasonableness standard**” when assessing SERs.
- This means that there are guidelines for how government is expected to fulfil these rights. This limitation has three aspects:
 - * Progressive realisation – the government must be shown over time to be doing more to realise a particular right
 - * Within available resources – the government has to work within the budget it has
 - * Reasonable – whatever policy the government enacts, it must be seen to be reasonable in light of the nature of the SER violation



GROUP ACTIVITY

Exercise 2:

Learners should be divided into groups of six. The case study below should be read to or by learners.

The following questions should be posed to learners:

- Which rights are being affected?
- What are your thoughts on the article?
- Does the state have a duty to provide resources?

Comments for TEACHING Fellows:

It is important that all learners fully understand the impact that a lack of resources or access to social and economic rights will have on themselves and their communities.

CASE STUDY

Forgotten schools of the Eastern Cape left to rot

08 MAR 2013 00:00 VICTORIA JOHN

Overcrowding, too few teachers, not enough furniture or appalling toilets seem to have become the norm at some of the Eastern Cape's schools.

The Legal Resources Centre (LRC), accompanied by the Mail & Guardian, found the schools, sat down with their principals, spoke to teachers and pupils, walked through classrooms and looked at the toilets to try to imagine what it would be like to have to study there.

"I am overwhelmed at the enormous challenges so many schools still face and many are not even on the department's radar," said Cameron McConnachie, an attorney for the centre, a non-governmental organisation fighting for the protection of human rights in South Africa.

The accelerated schools infrastructure development initiative (Asidi) is supposed to replace mud schools with proper facilities. It was created in response to court action brought by the LRC in 2009 against the Eastern Cape education department on behalf of seven mud schools and the Centre for Child Law.

The case was settled out of court. But of the 49 schools that Asidi put on its list to be replaced by March 2012, many might be near completion, but only 10 are finished and only two have been handed over to communities.

There are still more than 400 mud schools in the province. Some have received temporary container classrooms, but many do not appear to be on any government list or are not even classified as mud schools, such as Samson Senior Primary.

Into the gloom

Last Monday, we stood on a hill in Libode, an hour-and-a-half's drive from Mthatha, with principal Agnus Mbali, who pointed to the old school on the opposite hill. It was so dilapidated and far away from the centre of the village that she and the teachers had abandoned the buildings and moved to mud huts in the village.

Slowly, we see the faces of pupils sitting three or four to a desk meant for two. A teacher who struggles to speak English tells us that the school has enough textbooks, yet these are in messy piles on a bed against the side of the hut.

There is no electricity. There is no running water. If a pupil is thirsty, he has to use the village's communal tap. The court battles over shocking school conditions have raged for years in the province, whose service delivery is so notorious that it is producing, as one politician called it, education and health "refugees".

The LRC last year sued the province over the department's failure to fill 3 000 empty teacher posts and again on behalf of the Centre for Child Law and schools over a shortage of more than 500 000 desks and chairs.

Some of the schools we visited also formed part of the highly publicised court case brought by non-governmental organisation Equal Education last year over norms and standards for school infrastructure.

After years of campaigning, Equal Education, represented by the LRC, took to court evidence of shocking school infrastructure and why it breached pupils' right to education. It wanted Basic Education Minister Angie Motshekga to publish the norms, a document it says will provide rules to establish, for instance, how big a classroom should be and the ratio of pupils to toilets. In an out-of-court settlement, Motshekga agreed to do so. A final version is expected to be made public on March 15. Until now, Equal Education says, schools have been built across the country in an ad hoc way, with help from the private sector and often only when the department is faced with another embarrassing trip to court, political threats or a media exposé.

This could not be truer for the Eastern Cape, a province in which the education department has consistently blamed a lack of funds and interference by teacher unions, among for the most part, the attitude of those with the power to help these mostly rural, struggling schools seems to be: if you cannot see them, maybe they will go away.

The roof at Bomvini Primary School, a 30-minute drive from Samson Senior Primary, also leaks. One of the classrooms is the borrowed, half-

built hut of a community member. To get to the back of the classroom, some of the 139 pupils jump from desk to desk. Sometimes classes are conducted outside, under the sky, because of a lack of classroom space. other excuses, for its inability to help its barely functioning schools. We drove further down the winding dirt road to the site of Bomvini's alleged planned R18-million replacement. We climbed the mounds of earth where the school will stand one day, looked at the spectacular views and the sparsely populated hills and asked ourselves: Why here?

At Putuma Junior Secondary School, the grade two class has 140 pupils. Beyond the mass of small bodies, you can see a stack of plastic tables in a corner, but there is not enough space to put them out. The heat is oppressive. The windows *cannot be opened*.

There are 165 pupils in the grade one class.

Both classes have one teacher each.

Makeshift arrangements

Kangelani Manana is a grade 10 pupil here. The long-drop toilets do not have toilet paper and they smell so bad, he says he and the other boys just use "the bush". He motions towards the long grass beyond the school's trampled playground.

On the wall at Tolweni Senior Secondary School, a sign is painted: "Welcome to Tolweni SSS. Education is the key to success."

But what kind of an education are the pupils at this school getting if they do not all have a teacher? Or even desks and chairs? There are more than 1 300 pupils, but only 24 teachers. Principal Sipho Hlakanyane has asked the parents in this isolated village in Mount Frere to contribute what they can to the R3 000 a month salaries of a few teachers he has convinced, without authorisation from the department, to work at the school while another plan is made.

As the year progresses, many schools in the province apply to the education department to have vacant teacher posts filled with temporary teachers. At the end of each year, the department, in an attempt to cut costs, terminates the contracts of many of those teachers. But, despite the action of Hlakanyane, some pupils still do not have a teacher in front of them.

"The department expects us to do well. It expects us to get good marks, but how do we do that with this going on?" he said.

Pupils squash together next to the steel frames of what were once desks. Or they use pieces of wood taken from broken desks or something

flat, like a rusted metal table found outside the school, to make some sort of a surface to put their books on. “I’ve been asking the department for more desks and chairs since the start of 2012,” Hlakanyane said.

A stinking mess

We stood in the long grass at the edge of the school. It was 2pm and 38 degrees. The sweat dripped down Hlakanyane’s face, yet he still wore a purple shirt, tie and suit pants. I left him to return to his office and followed a group of girls going to the toilets, housed in corrugated sheeting. They were “bitter”, they told me, that their school did not have enough desks and chairs. It was uncomfortable. “We would say thank you if we got more,” they said.

One of them, Ayanda Mndwetywa, said: “It’s bad, but we are used to it. I mean, what option do we have?”

I held my breath as we neared the toilets. The sign “female” is painted in red across the zinc. Above the long drops are black plastic pedestals, less than a metre high. Some of the toilets were filled with waste and were unusable. The smell was sickening. With the door closed it was pitch-dark inside. Insects whirled and whined close by.

Squinting in the sunlight a minute later, I asked Mndwetywa what her dream school would be like.

Would it have enough desks and chairs? Flushing toilets?

“It would just give me a good education. Good teachers,” she said.

The only difference between the toilets at Tolweni and the toilets at Gwebityala High School in the Kotyana area is that the doors at the latter do not close. There is blood on one of the pedestals. And there is no toilet paper to clean it up.

The toilets do not offer the privacy, running water and other facilities needed to manage menstruation hygienically, so many female pupils just do not come to school when they have their periods.

On the hill above the toilets are the classrooms, where we find the most severe case of overcrowding we have yet seen. There are 162 pupils in the grade 10 class. There is so little space that the teacher can barely fit in the gap between pupils’ knees in the front row and the chalkboard.

Amid the travesty of school infrastructure our group has witnessed over the past four days, there are success stories.

Mbananga Junior Secondary School now has desks and chairs.

... Turning to the court to force the department to do its job is not a sustainable solution to the crisis in education in the province and the

LRC is the first to admit it.

It is those who have access to state funds and the authority to walk into every single school that need to step up to the plate.

In the meantime, “there are glimmers of hope that things are improving as a result of litigation”, the LRC’s McConnachie said, mentioning that new, permanent classrooms had been built at some schools, others had temporary classrooms and furniture had been delivered to some...

<http://mg.co.za/article/2013-03-08-00-forgotten-schools-of-the-eastern-cape-left-to-rot>

Questions to guide discussion of article:

- 1) What obligations do you think the Right to Education places on government?
- 2) Do you understand why this is a socio-economic right?
- 3) Which other rights are affected in this situation?
- 4) What do you think is the reason for the unequal schooling system in our country?

Right of Access to Adequate Housing



GROUP ACTIVITY

Exercise 2:

Ask the class:

- What does the right of access to housing in s26 of the Constitution mean?
- Does it mean that the government must give every single person in SA a house? Which positive duties does this right place on government?
- How do you think this right is similar or different to the right to food, water or social security?

Give the learners an opportunity to formulate their responses. All responses should be written on a chalkboard. This will lead into an explanation of the right.

Comments for TEACHING Fellows:

We are going to use the Grootboom case to explain the content of socio-economic rights, especially the concepts of 'access', 'reasonable legislative and other measures', 'within available resources' and 'progressive realisation'

CASE STUDY

Government of Republic of South Africa and Others v Grootboom and Others

Mrs Irene Grootboom and the other respondents were rendered homeless as a result of their eviction from their informal homes situated on private land earmarked for formal low-cost housing. In this case the court had to consider the meaning of the right of access to housing in section 26 of the Constitution and the proper approach to be adopted to the application of that section.

The court stated that 'The right of access to adequate housing cannot be seen in isolation. There is a close relationship between it and the other socio-economic rights. Socio-economic rights must all be read together in the setting of the Constitution as a whole. The state is obliged to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing'

The court goes on to examine the meaning of the section, 'The right delineated in section 26(1) is a right of "access to adequate housing" as distinct from the right to adequate housing... For a person to have access to adequate housing all of these conditions need to be met: there must be land, there must be services, there must be a dwelling.'

While looking at 'reasonable legislative and other measures', the court states that 'subsection (2) also makes it clear that the obligation imposed upon the state is not an absolute or unqualified one' and that 'A reasonable programme therefore must clearly allocate responsibilities and tasks to the different spheres of government and ensure that the appropriate financial and human resources are available.'

Then the court looks at the approach we need to take to understanding the concept of 'progressive realisation of the right' and says 'The term "progressive realisation" shows that it was contemplated that the right could not be realised immediately. But the goal of the Constitution is that the basic needs of all in our society be effectively met and the requirement of progressive realisation means that the state must take steps to achieve this goal.'

Finally, the court examines the meaning of 'within its available resources' and states 'The third defining aspect of the obligation to take the requisite measures is that the obligation does not require the state to do more than its available resources permit... Section 26 does not expect more of the state than is achievable within its available resources'

Comments for TEACHING Fellows:

Once you have gone through the Grootboom case with your class, go through the newspaper article below and let the learners have a debate about the impact (if any) that this judgment has had on Mrs Grootboom's life and the lives of others in similar positions.

Furthermore, ask learners whether it is fair to not provide housing to all citizens if the state does not have enough available resources. How can they as citizens assist government in realising and upholding these rights (active citizenship), or do they not have a duty to do so? Is the illegal act of selling RDP houses justified due to the backlog in housing?

CASE STUDY

Grootboom dies homeless and penniless

08 Aug 2008 10:45 Staff Reporter, Pearlie Joubert

Mail & Guardian

Irene Grootboom was the woman whose name became known around the world for enforcing the state's obligation to respect socio-economic rights, especially of the homeless. Yet, when she died this week in her forties, she was still homeless and penniless. Eight years ago the Constitutional Court ruled in Grootboom's favour, saying that she and others living in an informal settlement on Wallacedene sports ground near Kraaifontein could not be evicted without being given alternative accommodation. Crucially, the court found that the primary failure by the state was the inadequate housing programme, which didn't make sufficient provision for people in urgent need. It was the first

Constitutional Court judgement on socio-economic rights that found that the state had not complied with its obligations and provided an order compelling government to take action on socio-economic grounds.

The Grootboom judgement became the foundation case in assessing the state's responsibilities on socio-economic rights and has been used as the basis of other legal arguments. It was a key component of the Treatment Action Campaign's successful court case against the government for its delays in providing effective measures to cut mother-to-child transmission of HIV.

In its judgement the court explained what the state's obligations are, with consequent implications for state planning. A settlement between the opposing parties was made into a court order, in terms of which the national and provincial governments were to provide for the needs of Grootboom and the 390 adults and 510 children in the informal settlement. The court instructed the Human Rights Commission to oversee implementation of its ruling.

Judge Richard Goldstone, a Constitutional Court judge at the time of the hearing, described the Grootboom judgement as unique, saying it will be remembered as "the first building block in creating a jurisprudence of socio-economic rights".

Grootboom's victory gave legal muscle to the poorest of the poor and has been studied around the world. Her legal representative at the time, Ismail Jamie, said the Grootboom decision was "undoubtedly one of the two or three most important judgements the Constitutional Court has made since its inception".

This week Jamie said that Grootboom's death "and the fact that she died homeless shows how the legal system and civil society failed her".

"I am sorry that we didn't do enough following-up after judgement was given in her favour. We should've done more. I feel a deep regret today," he said.

Jamie described Grootboom as a true activist. "She was one the most vulnerable of that community because she had kids. She was a woman and a strong person prepared to fight and take on the system. She was clear and resolute to take on this battle on behalf of her community, which was a completely integrated, mixed-race group."

Western Cape general secretary Mcebisi Skwatsha said Grootboom's death in a shack this week exposes all the fault-lines in the housing policies.

“Understanding that Irene died while waiting for a decent house is sad and it illustrates the challenges that we face to ensure that all have houses, security and comfort, as is promised in the Freedom Charter drafted 53 years ago.

“She was a true hero, a genuine leader of her people, a hero of the working class, a symbol of hope to the poor, homeless and marginalised. Her courage and commitment to the creation of a society in which all enjoy a better life will be sorely missed,” Skwatsha said.– *Pearlie Joubert*

CASE STUDY 2

READ AND CRITICALLY DISCUSS THE BELOW ARTICLE WITH YOUR LEARNERS AND THE IMPACT ON RIGHT OF ACCESS TO HEALTHCARE:

‘Health-E: Stalking a virus among the shadows’

13 MAR 2016 07:45 (SOUTH AFRICA) DAILY MAVERICK

More than 3-million South Africans are on antiretrovirals (ARVs) today but even the world’s largest HIV treatment programme has been unable to reach those who live in society’s forgotten corners where the scourge thrives among darkness and death. Now, a rare mix of political will and science may be able to drive the virus out into the light, and possibly changing the lives of thousands, writes LAURA LOPEZ GONZALEZ for HEALTH-E NEWS.

Promise Ngobeni lost her parents to Aids-related illnesses as a child. The virus that robbed Ngobeni of her parents has stalked her since she began working as a sex worker in a Nelspruit club as a teen...

On Friday, South Africa announced it would become one of the first countries to begin providing the combination ARV Truvada to at least 3,000 HIV-negative sex workers to help prevent them from contracting HIV. Combining the ARVs emtricitabine and tenofovir, Truvada taken daily has been shown to reduce risk of contracting HIV by more than 90 percent.

The intervention is called pre-exposure prophylaxis (PrEP). Last September the World Health Organisation (WHO) endorsed PrEP as well as testing and immediately treating people with HIV.

Friday's announcement comes as a recent study conducted among 2,200 female sex workers in Johannesburg, Cape Town and Durban found about 72 percent of women surveyed were living with HIV. Although more than 90 percent of sex workers surveyed had tested for HIV, less than a third of those living with HIV were on ARVs — far less than the national average, according to South Africa National AIDS Council (Sanac) CEO Dr Fareed Abdullah.

"We cannot reclaim the morality of society by excluding the most vulnerable. Whatever views we might have about sex workers, whatever beliefs we have about sex workers, whatever statutes are on our law books about the legality of sex work," Ramaphosa said, "we cannot deny the human and unalienable rights of people who engage in sex work."

"Sex work is essentially work," he said...

International donors like the Global Fund to Fight Aids, Tuberculosis and Malaria is increasingly pushing countries to address groups such as sex workers, injecting drug users and young women in national programmes not only because it promotes human rights but because it's just good science...

"Just building clinics and making healthcare available gets to a lot of people, but it doesn't get to the people who are beyond the reach of clinics – that really means getting to the most vulnerable," Dybul added...

Young women between the ages of 15 and 24 years old are more than four times more likely than men in their age group to be living with HIV, according to the latest Human Science Research Council household HIV survey. Women in this age bracket also account for about a quarter of all new infections in South Africa...

"Once we understand the social, cultural and economic context and the emotions underneath what these young women are feeling and believing...what their need for HIV prevention is, then we'd be ready to send a message out to young people."

Questions to guide discussion of article:

- 1) Do you agree with government's decision to provide ARV's to sex workers?
- 2) How can we address the high levels of HIV infection in our society?
- 3.) What are some other vulnerable groups you can think of, who may also struggle with accessing their rights?

Comments for TEACHING Fellows:

A link should be shown to learners, between vulnerable groups and the need for the progressive realisation of rights. Learners can be asked to reflect on the lesson and the three case studies above. Critical discussions should be encouraged-learners may have a different perspective on the three scenarios.

Conclusion: Learners should have a clear understanding of the significance of having social-economic rights and their protection. It should also be stated that negative actions, such as corruption may influence their rights.

It is therefore important that they are accountable for their actions (by not destroying resources that are used in the realisation of these rights) and by holding the state accountable for the lack of progressive realisation.

SUMMARY

Socio-Economic Rights can be found in Sections 26, 27, 28 and 29 of the Constitution.

Right of Access to Housing (s26)

- '(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'*

Healthcare, food, water and social security (s27)

- '(1) everyone has the right to have access to –*
 - a. healthcare services including reproductive healthcare;*
 - 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*

Section 28 constitutes a 'mini-charter' of children's rights and covers diverse issues such as civil and political rights, including the rights to a name and nationality (section 28(1)(a)); socio-economic rights, for instance the right to basic nutrition, shelter, basic health care services and social services (section 28(1)(c)); child justice (section 28(1)(g)).

Section 28 (2) sets out the best interests of the child standard:

- '(2) A child's best interests are of paramount importance in every matter concerning the child'*

Section 29 deals with the Right to Education:

- '29(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'

What are social and economic rights?

- SER place positive obligations on government - that means government must do something for the people of South Africa in order to fulfil our rights.
- The other rights we have discussed concern government's obligation to allow us to exercise our freedoms – such as the right to practice what we believe or protect our speech – but not to actually provide us with anything. So these rights place a different kind of responsibility on government.
- Sections 26 and 27 of the Constitution: right to access to health care, housing, food, water and security. Section 28 deal with children's rights. All of these are SERs. South Africa is praised all over the world for including these kind of rights in its new Constitution, so this is something to be proud of.

Why do we have such rights?

- Poverty is often a result of structural inequality, which means that people live in poverty as a result of circumstances into which they were born – it was not a choice they made. As a result, it becomes the government's duty to help them.
- SER are central to being able to realise other political rights. E.g. without food, it is difficult to realise freedom of expression, participation, etc.
- By allowing SER violations to be challenged in court, the government is making it known that they value these rights and individuals can enforce these rights in court.
- SER therefore protect people, and the courts have a duty to intervene when the government is not meeting its obligations.

South Africa has the **"reasonableness standard"** when assessing SER. There is an internal limitation built into the rights, of which there are three aspects:

- Progressive realisation
- Within available resources
- Reasonable

The government is expected to take all reasonable measures to achieve the progressive realisation of these rights. A reasonable programme must provide for the needs of the most vulnerable.

LESSON 10

The Right To Education

Name: _____ School: _____ Prepared By: _____

Overview & Purpose	Education Standards Addressed

	TEACHER GUIDE	PUPIL GUIDE	
Objectives (Specify skills / information that will be learned.)			Materials Needed • <i>None</i>
Information (Give and / or demonstrate necessary information)			
Verification (Steps to check for pupil understanding)			Other Resources • <i>None</i>
Activity (Describe the independent activity to reinforce this lesson)			

Introduction:

Section 29 of the Constitution sets out the Right to Education, s29(1) reads as follows:

'29(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'*

The history of the right to education:

Prior to our 1996 Constitution, not everyone had the right to basic or further education. In fact, under the apartheid regime, the Bantu Education Act provided that funding for public schools which black learners attended derive from black people's tax.

This ensured that black students had minimum resources and tools for learning. This is an example of a violation of the right to education for the affected pupils. As we know, the Bill of Rights was formed to redress past injustices, and the addition of the right to education has thus ensured that even adults who could not finish high school may now do so at registered institutions.

This constitutional right also ensures that every South African citizen is afforded basic education at the least, and of course, further education where possible.



GROUP ACTIVITY

Exercise 1:

Ask Class: Looking back at the abuse of this right under the apartheid regime and our current state, would you say that the government is progressively realising this right? If so, how?

Divide the learners into small groups to discuss this question and then nominate a few people to give feedback to the class.

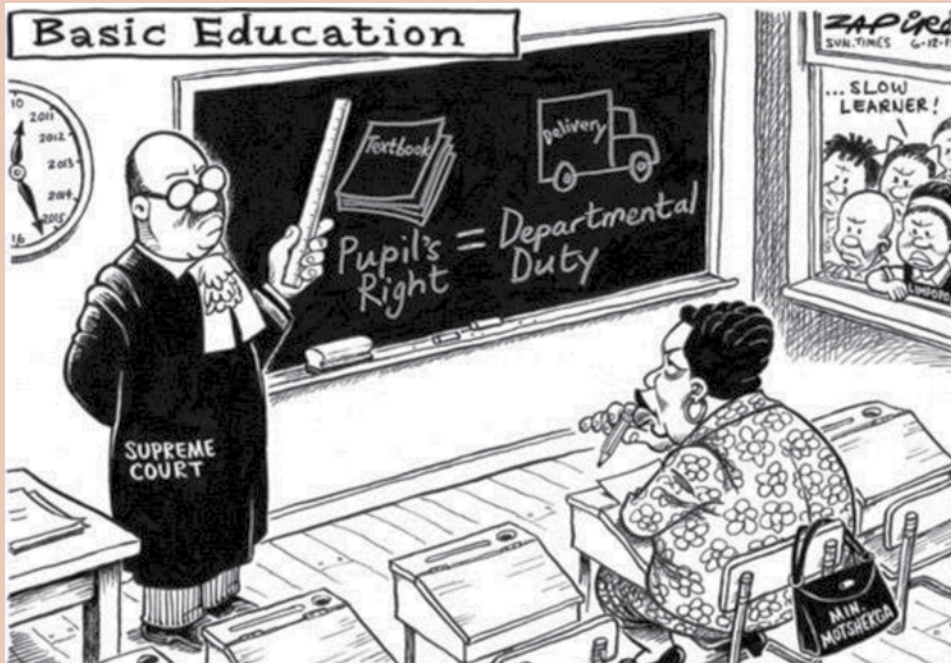
Comments for TEACHING Fellows:

The purpose of this group activity is to make learners understand the progression of the education system from the apartheid regime to the current right to Education found in section 29 of the Constitution.

The activities below should be used as a tool to show learners how government is facing challenges in adequately providing this right to schools after more than 20 years of democracy. In this lesson, learners should be encouraged to discuss their concerns.

Remind learners of the concept of progressive realisation, as discussed in the Socio-economic rights lesson.

CASE STUDY



<http://mg.co.za/cartoon/2015-12-07-slow-learner-motshekga-receives-basic-education>

Accessed: 2016/04/18



GROUP ACTIVITY

Exercise 2:

Divide the class into small groups. A copy of the cartoon in the case study above should be provided to each group.

Learners should be asked the following questions:

- What do they know about the textbook saga in Limpopo?
- What does the right to Education mean to them?
- Has the government provided adequate access to this right? (use various examples of the textbook and toilet saga's in schools in parts of South Africa)
- How can this right be realised?

Comments for TEACHING Fellows:

The Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure should be read in advance by all teaching fellows and explained in simple terms to learners.

The story of Michael Komape is an example of the importance of ensuring that these minimum standards are met.



GROUP ACTIVITY

Exercise 3:

Ask the learners to think about what they think the Right to Education should 'look like'.

Everyone needs to make a list of the things they think they must have in order to enjoy their Right to Education (for example – this list could include: an adequate number of teachers at the school; a school library; textbooks; classroom facilities).



GROUP ACTIVITY

Exercise 4: CASE STUDY (DEBATE)

Equal Education's Grootkraal Primary School Case:

This case involved a school which was facing a shut down as it was built on private land and the owner now wanted to develop the land into a game reserve. The Schools Act allows the owner and the government to enter into a security tenure agreement, but the provincial government maintained that it cannot afford to pay the rent demanded by the owner.

Debate question:

This is the only school in this very poor community. Should it be shut down by the owner or should the government expropriate the land and compensate the owner? Does the right to ownership of land outweigh that of education? Keep to the main topic: the right to education.

A few years ago there was another situation where some schools were almost closed, but for different reasons. In 2012 the Western Cape Education Department initiated the school closure process for some schools in disadvantaged areas which were not functioning as they should. There was significant opposition to the plans to close these schools and eventually the plans were halted. The below article can form the basis for a discussion of whether learners agree or disagree with the closure of schools and the reasons therefore.

CASE STUDY

'Schools win closure fight'

10 February 2015 at 06:07am

CAPETIMES / Francesca Villette

CLOSING schools in the Western Cape had been an ill-conceived plan right from the start, the SA Democratic Teachers Union (SadtU) said yesterday as the province made a U-turn on closing 14 schools in disadvantaged areas.

The Western Cape Education Department (WCED) is now waiting to be billed for the lengthy court battle it put up to have a number of schools in the province closed.

It struck a deal with lobby group Save Our Schools (SOS) yesterday to have the 14 schools stay open on condition that the campaign withdraw its appeal in the Constitutional Court.

The proposed closures had caused a lot of stress and instability in the affected communities, SadtU provincial secretary Jonavon Rustin said.

"For two years the Western Cape government kept these schools hostage as part of an ill-conceived plan of then MEC for education Donald Grant. SadtU is vindicated by the offer to withdraw the notice to close 14 schools."

At the end of last year, the Supreme Court of Appeal upheld the WCED appeal to close all but one of 17 schools.

SOS had started the paperwork to take its fight to the Concourt to have the schools stay open. Two of the 16 schools had shut down as a result of teacher resignations, SOS co-ordinator Vanessa le Roux said.

Jessica Shelper, spokes-woman for Education MEC Debbie Schäfer, who replaced Grant last year, said because so much time had lapsed since the initiation of the closure process in 2012, the department needed to re-evaluate the conditions of the schools.

"The time that has elapsed will be at least four years once the Constitutional Court process is completed. This may render the facts potentially irrelevant. We won't have (the bill) for a while as counsel has not billed for the work done yet," Shelper said.

ANC provincial chairman Marius Fransman, who had been vocal in support of the schools remaining open, congratulated SOS and its legal team for pursuing the matter.

Le Roux said the WCED would inform them when it planned to re-evaluate the schools and added that the educational and social issues many of the schools had faced had improved. "Parents have become more involved and more parents have sent their children to school. Class sizes have increased and more permanent staff have been employed," Le Roux said.

Samantha Zeederberg, chairwoman of the Lavis Drive Primary School governing body, one of the schools which had faced closure, said the no-fee school had opened an extra classroom to accommodate a growing number of pupils.

Myrna Williams, principal at LK Zeeman Primary in Paarl, said pupil numbers had increased from 194 to 225 over the last year. "The potential closure served as a wake-up call for parents," Williams said.

Grant denied that his decision had been ill-conceived and said he had acted in the best interest of the pupils.

"I am confident that my decision was the right one at the time. It is sad that it has taken this long to resolve and I agree with Schäfer that the situation needs to be resolved. But the court that ruled in our favour to have the schools close just proves my point," he said.

francesca.villette@inl.co.za

The Right to Education can also be linked to other socio-economic rights and the realisation of many of these rights is intimately linked. Equal Education is an organisation that works for quality and equality in South African Education. In 2013 they launched a sanitation campaign which examined the state of sanitation facilities in schools in South Africa. Read the below extract on this campaign with your class and allow it to form the basis of a discussion on this issue.

CASE STUDY 1

Gauteng: Our campaign for a sanitation plan

In August 2013, equalisers in Tembisa, a township outside of Johannesburg in Gauteng province, launched the Gauteng Sanitation Campaign. They vowed not to stop the campaign until all students enjoyed dignified and safe sanitation in their schools. Since then, we have conducted one of the largest social audits in South Africa. We organised a march of 2,000 Equal Education (EE) members, picketed and protested. We have met with government officials and members of the Gauteng Provincial Legislature to express our demands. Today, our campaign includes EE student members ("equalisers"), EE parent members, churches and community organisations in over 20 townships in all regions of Gauteng including Ekurhuleni, Johannesburg, Tshwane, Sedibeng and the West Rand.

In response to our campaign, the Gauteng Department of Education (GDE) has already spent R150 million to upgrade the sanitation conditions at 578 schools serving about 500,000 students. Government contractors have fixed or replaced the toilets, taps, pipes and basins at these schools.

Some schools have received new toilet blocks altogether. Politicians and government officials throughout the GDE have spoken out on the need for principals and School Governing Bodies to better maintain toilets, even issuing a new manual to guide schools on how to do this.

More recently, the GDE committed to spending R50 million to fix the toilets at the 50 worst schools in Gauteng.

It promised to fix all the matric toilet blocks in the province. In addition, the GDE promised to undertake significant policy changes by 16 June 2015 that, if implemented, will improve access to toilets, maintenance, soap, sanitary pads and toilet paper in schools.

The Delivery of Pre-Fabricated Toilet Blocks

On 12 January 2014, MEC Creecy visited Tembisa to inspect school toilets. She announced that she would be delivering two pre-fabricated toilet blocks to five different schools in Tembisa, for a total of 10 new toilet blocks. She also said she would be sending contractors to Tembisa and other areas to address the poor state of school sanitation. At the time, EE applauded MEC Creecy's actions while pointing out that she had not yet met our demand to issue a sanitation plan.

In the first half of 2014, EE student members continued to monitor their school toilets. The pre-fabricated toilets arrived, yet they remained closed to students. Contractors took a long time to connect the toilets to the water and electricity systems. Afterwards, principals noted that the structures were insecure and did not want to open them to students.

Questions to guide discussion of article:

- 1) Do you have safe sanitation facilities at your school?
- 2) If you do, can you imagine being deprived of such a basic right?
- 3) Can we say that the dignity of learners is being respected if they don't have access to proper sanitation?

CASE STUDY 2

'Pit toilet death haunts mother despite changes at Limpopo school'

SOUTH AFRICA

Monday 12 January 2015 - 11:27am Contributors: Dianne Hawker

POLOKWANE – The mother of a Limpopo boy who died after falling into a pit toilet at school remains haunted by his death almost a year later.

Rosina Komape's five-year-old son Michael died after he fell into a pit toilet at his school in Chebeng village, outside Polokwane, on January 20 2014.

After being missing for several hours, Komape discovered his body in the depths of a pit toilet at the Mahlodumela Primary School. The corrugated iron wall, seat and floors of the toilet were rusted and he had fallen through.

When eNCA visited her almost a year after her son Michael's death, she was home with her young daughter, who was born just weeks after Michael died.

Komape no longer works and spends her days wondering whether her remaining son, Moses, will survive his school day unscathed.

Since Michael's death the school has been renovated. Pupils now have brand new toilet facilities and the school building has been painted a bright blue and cream.

Children at the school are happy and carefree – walking and running to their newly improved toilet facilities.

However Rosina Komape does not share their joy.

...She doesn't feel comfortable having her son at the same school where his brother died, but due to financial problem, has little choice.

Meanwhile the Limpopo Education Department says it has made a concerted effort to rid the province of dangerous pit toilets.

SUMMARY

The Right to Education, is found in section 29 of the Constitution:

29(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'*

The history of the right to education:

Prior to our 1996 Constitution, not everyone had the right to basic or further education. In fact, under the apartheid regime, the Bantu Education Act provided that funding for public schools which black learners attended derive from black people's tax.

This ensured that black students had minimum resources and tools for learning. This is an example of a violation of the right to education for the affected pupils. As we know, the Bill of Rights was formed to redress past injustices, and the addition of the right to education has thus ensured that even adults who could not finish high school may now do so at registered institutions.

This constitutional right also ensures that every South African citizen is afforded basic education at the least, and of course, further education where possible.

The Right to Education can also be connected to other socio-economic rights and the realisation of many of these rights is intimately linked. Like with other socio-economic rights the state must be able to show that it is taking reasonable measures, within its available resources to make sure that this right is progressively available and accessible to all people in South Africa.

LESSON 11

Freedom of Expression

Name: _____ School: _____ Prepared By: _____

Overview & Purpose	Education Standards Addressed

	TEACHER GUIDE	PUPIL GUIDE	
Objectives (Specify skills / information that will be learned.)			Materials Needed <ul style="list-style-type: none"> • None
Information (Give and / or demonstrate necessary information)			
Verification (Steps to check for pupil understanding)			Other Resources <ul style="list-style-type: none"> • None
Activity (Describe the independent activity to reinforce this lesson)			

Introduction:

Section 16 of the Constitution sets out the Right to Freedom of Expression. It reads as follows:

‘Everyone has the right to freedom of expression which includes –

- a. freedom of 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.*

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.’*



GROUP ACTIVITY

Exercise 1:

What do you understand by the word 'Expression'?

The word "Expression" in the Constitution is used in a broad sense, so this means that basically every act by which a person tries to express some emotion, belief, opinion or criticism should be considered as 'expression'.

So for example, you can stand on a street corner and shout out that you are sad, or shout out that you think Jesus is Lord, or shout out that you hate the ANC, because you are allowed to express yourself.

You can express yourself through art and through the clothes that you wear. You can also express yourself physically, through singing and dancing.

Conclusion: there are many ways in which someone can express himself or herself and our Constitution protects almost all of them.



GROUP ACTIVITY

Exercise 2:

Think about whether you have seen anyone in your school or community express themselves in any of the ways discussed above. Why do you think it is important that people be allowed to freely express themselves?

Comments for TEACHING Fellows:

Here just listen to the answers, they are all probably correct in some sense.

Think about apartheid, there was lack of free speech and people couldn't criticise the government openly. Maybe if they had been allowed to freely express themselves, apartheid would have ended a lot sooner.

Freedom of Expression is important because it helps to bring about the Constitution's vision of establishing democracy, openness and equality.

Lets look at some examples of Freedom of Expression:

Zapiro's Cartoon of Prophet Muhammad

Explain background – Zapiro's cartoon followed the controversy around the Facebook page, "Everybody Draw Muhammad Day," which was sparked by threats by a Muslim group against a TV show for depicting the Prophet in a bear suit.

What are the rights in conflict here? What are arguments in favor of each right?



Arguments in favour of religious freedom: Some Islamic Hadith (supplemental traditions) have explicitly prohibited Muslims from creating the visual depictions of figures under any circumstances because of a fear that it will encourage idolatry (define for learners). But not all Muslims agree on this.

Arguments in favour of expression: Zapiro cannot be prohibited from drawing a cartoon that offends some people. To allow that would be to allow the religious views of some to dictate to others what they can and cannot do and say, thus endorsing those religious views and choosing those views above the views and beliefs of others. That would fundamentally infringe not only on the freedom of expression of Zapiro and others but also on their freedom of religion and conscience. If you were a judge hearing this case, how would you decide it?

Conclusion: The media must be free because it has duties to the public to provide information that is impartial and truthful since it is the way the world communicates and the way the government communicates to the rest of the public. The press and media are very important and necessary in an open and democratic society.

CASE STUDY

Laugh It Off v SAB

This case involved a company called Laugh It Off promotions, and what they used to do was take popular logos of different companies and make a joke out of them and put them on T-shirts for sale. The company was sued by SAB because of this:

Comments for TEACHING Fellows:

Please print this case study and distribute to class.
Divide the class into groups to come up with arguments for both sides.



SAB felt that this would damage the reputation of the company and cause economic harm. Laugh If Off, however, argued that what they were doing was criticising the way SAB produced its beer by exploiting black workers and criticised the exploitation of blacks by whites in general and that the right to freedom of expression protected both these messages.

The court held that the rights of a person to express themselves should not be lightly limited and that all speech is protected and must be

appropriately balanced against other rights. Here Laugh It Off wasn't selling another beer but an abstract brand of criticism for which T-shirts were just the medium. The court added that it was irrelevant whether or not the court thought the T-shirts were funny, but what mattered was whether Laugh It Off should be free to make the joke. It was thought that the expression of humour is not only permissible, but also necessary for the health of democracy.

It is important that you know that Freedom of Expression is considered to be made up of other rights like dignity and political rights. However, if you take the Constitution as a whole Freedom of Expression is not the most important right; it will always have to be considered while also looking at dignity, freedom and equality.

NOW WE WILL MOVE ON TO LOOK AT SPECIFICALLY EXCLUDED FORMS OF EXPRESSION:

Let us take another look at Section 16 (2) of the Constitution:

- '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.'*

The second part of section 16 is what you can call a limitation to the first part. It gives us three instances in which you actually are not allowed to express yourself.

- a. The first instance in which you are not allowed to express yourself is if you are promoting war. War here means external aggression- in other words, war with other countries.

Civil war- war within our own country would fall within the second instance in which free expression not allowed.

- b. The second instance is when your expression is considered incitement of imminent violence. This means that your expression (incites) encourages violence in the near future (imminently).

- c. The final limitation is the most interesting, and instead of saying that whole long sentence we usually just say that freedom of expression does not apply to hate speech, so this is often called the hate speech limitation.

- 1) What do you understand by the words hate speech?

Answer: To advocate hatred is exactly what you think it is, it is to propose or call for hatred.



GROUP ACTIVITY

Exercise 3:

Now think about this example:

- 1) Let say I make a bunch of posters, some have a swastika painted on, other have pictures of Hitler saying he was the greatest man and all Jews must die, and some call for non Jews to get together and ask the government to send Jewish people out of the country. Then I go around and post these posters all along the streets and on buildings and in schools. Is this hate speech?

Answer: Of course it is. It advocates hatred and it incites harm.

- 2) Now imagine that an artist, and I paint the exact same posters as above but I display them in an art gallery as part of an exhibition that was based on World War Two. Why this hate speech?

Comments for TEACHING Fellows:

Listen carefully and give your learners time to think about these questions and give their responses. If there is time you can divide them into small groups for discussion. Then they can give feedback to the larger group.

So now we have looked at the “internal” limitation to freedom of expression – where freedom of expression crosses the line into becoming hate speech – but we also know about the section 36 limitation. Sometimes, rights will conflict with each other and then you have to weigh them against each other and see which one is more important in the circumstances.

Can anyone think of an example?

(Give the learners some time to respond)

For example, a real case came before the Constitutional Court having to do with child pornography. The Court said it could not ban pornography as a whole, but that it could ban child pornography. Why do you think this is? What rights could be in conflict here?

Freedom of Expression v. Best Interests of the Child

Using Section 36, the Court decided that the harm that occurs to a child in making child pornography outweighs any benefit to protecting someone’s freedom of expression in making the pornography.

The courts always need to do a fine balancing act between competing rights and interests, based on the particular facts of the case before them.

Introduction to Defamation:

OK, now let's turn to another example that may be a little more difficult to analyse. Another limitation on freedom of expression is something called defamation. Does anyone know what that is? [Wait for responses.]

The law of defamation puts restrictions on freedom of expression, and seeks to find a balance between an individual's right to his or her reputation or good name and another's right to free expression. In a defamation case, a victim is compensated (given money) for any publication that injures someone in his or her good name and reputation. So if you publish something about someone else, that has a chance of ruining their good name, they may be able to bring a charge of defamation against you. The focus of defamation is to protect someone's constitutional rights to dignity and privacy.

Under a claim of defamation, you must ask two questions:

- 1) What would a reasonable person think the publication meant?
- 2) Would she or he find this publication to be defamatory?

Recently there have been many debates in the media about Freedom of Expression and how far we can go before a statement becomes hate speech.

In January of this year, there was public outcry when a woman, named Penny Sparrow, posted a comment on face book, where she speaks about how packed beaches in Durban are on New Year's Day and calls black beachgoers monkeys.

Examine the below article and allow learners to discuss their views on this issue.

CASE STUDY

'Penny Sparrow: Can racism be outlawed in South Africa?'

04 Jan 2016 19:32 Pontsho Pilane

The notorious estate agent may well face sanctions by SA's judicial system if a case of hate speech brought against her finds its way to the courts.

The penalties for hate speech, however, were formulated with reconciliation in mind, and lead to incarceration only if court orders meant to facilitate formal apologies and financial redress are ignored, resulting in defendants being in contempt of court. Comments by real estate agent Penny Sparrow caused outrage on social media as South Africans reacted and condemned her views at the weekend. In a post on a neighbourhood group on Facebook, Sparrow lamented the state of a Durban beach on New Year's Day, and called black people monkeys.

In just a few hours, Sparrow's comment had spread across all social media platforms, with many contacting Jawitz Property, where it was assumed she was employed, and complaints against her had been filed with the South African Human Rights Commission (SAHRC)...

Hate speech may be defined as "any speech, gesture or conduct, writing, or display which is forbidden because it may incite violence or prejudicial action against or by a protected individual or group, or because it disparages or intimidates a protected individual or group. South Africa's judicial system is equipped to formally test the argument that Sparrow's comments constitute hate speech.

“While the South African Constitution makes very little reference to ‘hate speech’, it prohibits speech that propagates for war; incitement of imminent violence; or advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm,” said Nomagugu Nyathi, a researcher at the Freedom of Expression Institute.

In accordance with the Constitution of South Africa, hate speech does not constitute freedom of expression and therefore it is not acceptable. The Promotion of Equality and Prevention of Unfair Discrimination Act, commonly known as the Equality Act, states that one of its main objectives is to “prohibit hate speech”...

Sparrow later posted an apology on Facebook. It fell short, however, of the Equality Court’s definition of an apology, which stipulates that a “mere retraction cannot be called a full and free apology”.

It is not the first time comments made on social media have landed someone squarely within in the SAHRC’s sights. In 2012, 45 cases were opened against model Jessica Leandra after she posted a series of racist tweets.

Digital media manager Natalie Govender said that although Sparrow’s comments were made on a neighbourhood watch group they were still considered public.

“As digital citizens, we must be aware that our rights to freedom of expression come with responsibilities,” she said. “Social media is not there for us to be racist, sexist or homophobic.”

Pontsho Pilane is a reporter for the Mail & Guardian

Questions to guide discussion of article:

- 1) What do you understand by the word hate speech?
- 2) Do you think that hate speech is harmful to society?
Why / why not?
- 3) Should hate speech be criminalised?
- 4) Have you ever heard someone use hate speech?

SUMMARY

The **Right to Freedom of Expression**, is found in section 16 of the Constitution:

Section 16 reads:

'Everyone has the right to freedom of expression which includes –

- a. freedom of 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.*

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.'*

As you can see section 16 specifically recognises some specific forms of expression. Can you imagine the implications if we did not have media freedom? How would society be able to access information and be kept up to date on what is happening in the world around us. During apartheid the media was censored, this meant that the government controlled what information was published in the media and made available to the public. Today the public has access to various different sources of information, so they are able to make informed decisions and have informed opinions about issues that affect their lives.

There was also lack of free speech during apartheid and people couldn't criticise the government openly. Maybe if they had been allowed to freely express themselves, apartheid would have ended a lot sooner.

Freedom of Expression is important because it helps to bring about the Constitution's vision of establishing democracy, openness and equality.

The second part of section 16 is what you can call a limitation to the first part. It gives us three instances in which you actually are not allowed to express yourself.

- a. The first instance in which you are not allowed to express yourself is if you are promoting war. War here means external aggression- in other words, war with other countries.

Civil war-war within our own country would fall within the second instance in which free expression not allowed.
- b. The second instance is when your expression is considered *incitement of imminent violence*. This means that your expression (incites) encourages violence in the near future (imminently).
- c. The final limitation is the most interesting, and instead of saying that whole long sentence we usually just say that freedom of expression does not apply to hate speech, so this is often called the hate speech limitation.

Finally, it is important that you know that Freedom of Expression is considered to be made up of other rights like dignity and political rights. However, if you take the Constitution as a whole Freedom of Expression is not the most important right; it will always have to be considered while also looking at dignity, freedom and equality. The courts often need to do a fine balancing act and weigh the Right to Freedom of Expression against other rights in the Bill of Rights and then decide how best to protect everyone's rights in a particular situation.

