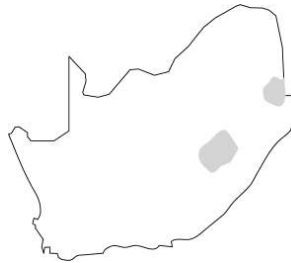
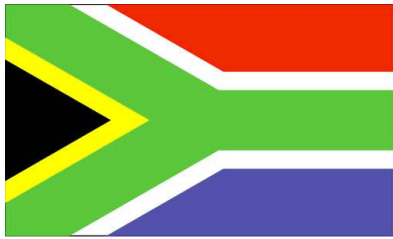


SOUTH AFRICA

(REPUBLIC OF SOUTH AFRICA)



BACKGROUND AND LEGAL SYSTEM

LEGAL SYSTEM	Based on Roman-Dutch law and English common law.
POLITICAL SYSTEM	Republic.
HEAD OF STATE	President, elected by the National Assembly. The President serves a term of 5 years with right to re-election for one more term.
HEAD OF GOVERNMENT	The President is both the chief of state and head of government.
SUBNATIONAL ENTITIES	There are nine provinces: Eastern Cape, Free state, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, North-West, Northern Cape, Western Cape. The administrative capital is Pretoria, the legislative capital is Cape Town, and the judicial capital is Bloemfontein.
SUBLOCAL ENTITIES	Unknown at this time.
TRANSLITERATION SYSTEM	Not Applicable.
LANGUAGES	Afrikaans, English, isiNdebele, isiXhosa, isiZulu, Sepedi, Sesotho, Setswana, siSwati, Tshivenda, and Xitsonga (all official languages).

CONSTITUTION

OFFICIAL NAME	Constitution of the Republic of South Africa.
ENACTMENT	Certified by the Constitutional Court on December 4, 1996, the Constitution was signed by then President Mandela on December 10, 1996, and entered into effect on February 3, 1997; it is being implemented in phases.
CITATION FORMAT	Constitution of the Republic of South Africa Act <act number> of <year>.
<i>Example</i>	Constitution of the Republic of South Africa Act 200 of 1993 (Interim Constitution).

STATUTES

GOVERNMENT STRUCTURE	A bicameral Parliament consisting of the National Assembly (400 members elected by popular vote under a system of proportional representation to serve five-year terms) and the National Council of Provinces (90 delegates and 10 nonvoting delegates representing provincial government, 10 elected by each of the nine provincial legislatures to serve five-year terms).
-------------------------	--

LEGISLATIVE
PROCESS

The South African Constitution (Act 108 of 1996) provides for the separation of the legislative, executive, and judicial branches of government, and it also contains elements of federalism. The nine provinces may pass laws on certain matters such as education, health, and housing, but the national legislature retains supremacy in those areas and may override provincial legislation if it is deemed necessary. Exclusive provincial legislative competence is reserved for less important matters. The provinces have a role in drafting national legislation through their participation in the National Council of Provinces.

National bills usually emanate from government departments or ministries. These proposals, called “green papers,” are discussion documents containing policy options, which are published for outside input or comment. This process forms the basis for the publication of “white papers,” or broad statements of government policy. Comment may be invited from interested parties here as well.

At this stage, the Minister and officials within the department concerned may draft Legislative Proposals; these proposals are also considered by the Cabinet. Occasionally, these documents may be published as Draft Bills, for comment by a defined date, or given to certain organizations for comment.

Once all comments have been considered, documents are taken to the State Law Advisers who check the proposals in detail and their consistency with existing legislation. These proposals are then sent to be tabled or introduced into Parliament, known as the “first reading.” After the reading, they are put on the Order Paper and go to committees for consideration.

Committees consist of a proportional number of members of the different parties represented in Parliament who discuss particular Bills and may refine or amend them. Once a committee has approved a Bill, it goes for Debate in the House in which it was tabled. After agreement is reached in that House, it is transmitted to the other House and the same procedure is followed.

When both Houses have passed the Bill, it is allocated an Act number, is sent to the President for assent and is then published in the Government Gazette as an Act.

REPORTER	<p>Official Gazette: <i>Government Gazette [of the Union of South Africa]</i>. Vol. 1, no. 1-vol. 204 (31 May 1910-30 May 1961). Pretoria, 1910-1961 (in English and Afrikaans). Succeeded by <i>Staatskoerant van die Republiek van Suid-Afrika/Republic of South Africa Government Gazette</i>. Vol. 1, no. 1 (31 May 1961)-. Pretoria, State Library, 1961-date (in Afrikaans and English).</p> <p>Compilations or official codifications: <i>Statutes of the Republic of South Africa, classified and annotated from 1910</i>. Editorial Board, L.C. Steyn, Chairman, General Editor, I. Isaacs, Durban, Butterworths (South Africa), 1967 – (looseleaf) (this is a bilingual edition, English and Afrikaans). <i>Juta's statutes of South Africa</i>. 1 ed. 1990 -date. Capetown, etc., Juta and Co., 1991 -date. 6 vols. <i>Juta's digest of South African Law</i>. 1996 -date. Capetown, Juta, 1996 -date.</p> <p>Session laws: <i>Statutes of the Union of South Africa/ Wette van de Unie van Zuid-Afrika</i>. 1910/11 – 1961. Cape Town, Govt. Printer, 1911-1961. Succeeded by: <i>Wette van die Republiek van Suid-Afrika/Statutes of the Republic of South Africa</i>. 1961-1967. Pretoria, Govt. Printer, etc., 1961-1968. Continued by: <i>Statutes of the Union of South Africa:classified and annotated from 1910</i>. I. Isaacs, General editor, Durban, Butterworths, 1968- date.</p>
CITATION FORMAT	<name of act> <act number> of <year> s. <section number, if applicable>.
<i>Example</i>	Castle Management Act 207 of 1993 s. 19.

ADMINISTRATIVE REGULATIONS

ADMINISTRATIVE SOURCES	The Government Gazette is usually the only printed source of regulations. Administrative regulations are actually subordinate pieces of legislation issued by government ministers as enabling statutes. The Gazette also contains proclamations, regulations, other government notices, commencement dates of statutes, price regulation measures, and industrial regulations.
REPORTER	<i>Government gazette [of the Union of South Africa]</i> . Vol. 1, no. 1-vol. 204 (31 May 1910-30 May 1961). Pretoria, 1910-1961 (in English and Afrikaans. Succeeded by <i>Staatskoerant van die Republiek van Suid-Afrika/Republic of South Africa Government Gazette</i> . Vol. 1, no. 1 (31 May 1961)-. Pretoria, State Library, 1961-date (in Afrikaans and English).
CITATION FORMAT	<name of regulation> <(abbreviation)> <regulation number> / <year>
<i>Example</i>	Government Notice (GN) R3/1981 or GN R3 of 2 January 1981.

CODES

CIVIL CODE	There is no Civil Code, per se; regulations arising under this topic are likely to be found in the Government Gazette.
CODE OF CIVIL PROCEDURE	There is no Code of Civil Procedure, however, Acts pertaining to civil procedure are contained in the Government Gazette. For example, Act 59 of 1959 pertains to Supreme Court procedure (last amended by Act 100 of 1987), and Act 3 of 1944 (last amended by Act 118 of 1991) treats Magistrate's Court procedure.
COMMERCIAL CODE	There is no Commercial Code, per se; regulations arising under this topic are likely to be found in the Government Gazette.
CRIMINAL CODE	There is no Criminal Code, per se, however, criminal laws are contained in the Government Gazette. The principles of Criminal law are part of the common law and can be found in judgments of the courts and in text books. For example, act 121 of 1998 (organized crime), Act 27 of 2002 (Criminal Court

implementation), Act 112 of 1998 (witness protection), Act 117 of 1991 (serious economic offenses), and Act 75 of 1996 (international cooperation in criminal matters).

CODE OF CRIMINAL
PROCEDURE

The Code of Criminal Procedure is contained in Act 51 of 1977 (last amended by Act 135 of 1991).

CITATION FORMAT

Because these codes are legislative, the same citation format applies as would be used with statutes.

Example

Act 67 of 1962 (last amended by Act 77 of 1996).

CASE LAW

JUDICIAL
OVERVIEW

South Africa embraces the notion of “constitutional supremacy.” The judicial system consists of a Constitutional Court, a Supreme Court of Appeal, Special Appellate Courts, the High Court, Magistrates’ Court, and local tribunals.

Section 39(2) of the Constitution says that when interpreting legislation and when developing the common law any court must promote the spirit, purport and objects of the Bill of Rights. This means almost any issue can become a Constitutional issue which could be dealt with by the Constitutional Court.

The Supreme Court of Appeal is the highest court for all matters other than constitutional matters.

The special Appellate Courts are the final courts of appeal for certain types of disputes (for example, Land Claims Court and Labor Appeals Court).

The High Court is the first court of appeal for cases from lower courts and has original jurisdiction over civil matters over a certain value. This court also has jurisdiction over special tax, consumer, and electoral court issues.

The Magistrates’ Courts are the regional and districts courts of first instance and the appellate courts for cases first tried in the Chief’s and Headman’s courts. These courts also contain special subject matter courts, such as those that hear divorce and

labor disputes.

The local tribunals include the Headmen's, Chief's, and other small claims courts.

REPORTER

1994-date

South African Law Reports (SA) 1947-date
Butterworths Constitutional Law Reports (BCLR) 1994-date
South African Criminal Law Reports (SACR) 1990-date
All South African Law Reports (All SA) 1996-date

1910-1994

South African Law Reports (SA) 1947-date
South African Criminal Law Reports (SACR) 1990-date
Prentice-Hall Weekly Legal Series (PH) 1923-date
Bophuthatswana Law Reports (6 vols.) (BSC) 1977-1990
Appellate Division Reports (A.D.) 1910-1946
Cape Provincial Division Reports (C.P.D.) 1910-1946
Eastern Districts Local Division Reports (E.P.D.) 1910-1946
Griqualand West Local Division Reports (G.W.L.) 1910-1945
Orange Free State Provincial (O.P.D.) 1910-1946
Division Reports
Transvaal Provincial Division Reports (T.P.D.) 1910-1946
Witwatersrand Local Division Reports (W.L.D.) 1910-1946
Natal Provincial Division Reports (N.P.D.) 1933-1946
Natal Law Reports (New Series) (N.L.R.) 1879-1932
Industrial Law Reports (I.L.J.) 1980-date
South African Tax Cases (SATC) 1926-date
Bantu Appeal Court Reports (B.A.C.) 1961-date
Native Appeal Court Reports (N.A.C.) 1952-1961

Pre-1910

Cape Supreme Court Reports (S.C.) 1880-1910
Reports of the Eastern Districts (E.D.C.) 1891-1909
of the Cape of Good Hope
Orange River Colony Reports (O.R.C.) 1903-1909
Transvaal Supreme Court Reports (T.S.) 1902-1909
Witwatersrand High Court Reports (T.H.) 1902-1909

CITATION FORMAT	<names of parties> <year of the law report in which the case was published> <volume number> <(abbreviation indicating the court which delivered judgment)> at <page number>. Names of parties should be in italics, and citation should be to the <i>South African Law Reports</i> whenever possible.
Example	<i>Minister of Interior v. Lockhat and others</i> 1961 (2) SA 587 (A) at 602D.
NOTE ON SOUTH AFRICAN LEGAL REPORTERS	A number of law reports cover the earliest South African cases, with the Cape cases dating back to 1828. Prior to Union in 1910, law reports were published for each of the High Courts in the Cape Colony, Natal, Orange Free State and Transvaal. From 1910 onwards, decisions of the Appellate Division were reported in addition to the separate reports for the four Provincial Divisions. Juta, South Africa's oldest legal publisher, has published law reports since the mid-nineteenth century. In 1947, Juta began publishing the (amalgamated) South African Law Reports (SALR), which includes leading judgments from all the South African superior courts as well as selected judgments from Zimbabwe and Namibia.

SOURCES

The CIA Factbook:

<https://www.cia.gov/cia/publications/factbook/geos/sf.html>

The State Department Background Note: South Africa

<http://www.state.gov/r/pa/ei/bgn/2898.htm>

Republic of South Africa Website

<http://www.info.gov.za/aboutgovt/index.htm>

Researching South African Law

http://www.nyulawglobal.org/globalex/South_Africa.htm

THE BLUEBOOK: A UNIVERSAL SOURCE OF CITATION (Columbia Law Review Ass'n et al. eds., 18th ed. 2005).

III-B THOMAS H. REYNOLDS & ARTURO A. FLORES, FOREIGN LAW:
CURRENT SOURCES OF CODES AND LEGISLATION IN JURISDICTIONS
OF THE WORLD, SOUTH AFRICA 1-49, 2004.

IV LEGAL SYSTEMS OF THE WORLD: A POLITICAL, SOCIAL & CULTURAL
ENCYCLOPEDIA 25-31 (Herbert M. Kritzer, ed., 2002).

SPECIAL THANKS

Professor. Pierre de Vos,
Professor of Law
University of Western Cape

T.R. Bynum – Staff Member. Oct. 2006
Thomas Clark – ICM Committee Member. Oct. 2006
Matthew T. Nagel – ICM Coordinator. Oct. 2006