

Department of Public Administration and Management
Rights and Obligations in Public Administration



Study guide 1 for **PUB2601**

UNIVERSITY OF SOUTH AFRICA

PRETORIA

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INTRODUCTION

1 General introduction

A few general hints follow to guide your studies in this course.

1.1 The extent of the study guide

The guide must be used in conjunction with the Constitution of the Republic of South Africa, 1996, that you can use as a source and as background for the selection of information in working out questions. Chapter 2 of the Constitution contains the Bill of Rights that is frequently referred to in this study guide.

The Constitution, 1996, is extensive and contains more information than you need to pass the exam. So don't lose hope before you begin.

The reason for the extensive nature of the references used in the study guide is to give you the best possible opportunity to research the facts in source documents. The study guide is designed in such a way that the activity questions should give you at least a basic idea of what the general governmental functions in South Africa entail.

1.2 Legislation as source documents

The most important source documents for the study guide are the different laws and regulations which guide practice. The practising public official who is involved with the delivery of general governmental services must give expression to this legislation. Some officials apply this legislation almost daily and must naturally be extremely familiar with their subject; others consult legislation only now and then. A very small percentage don't know the legislation at all — indeed, there may not even be one.

It is necessary that students, no matter what their field of study, use source documents. Students who study constitutional law should for example study the Constitution as the source of constitutional law.

The same applies to legislation in the field in which we are now busy. **The 1996 Constitution of the Republic of South Africa is essential for Study Guide 1 of this module (PUB2601 Study Guide 1). You have to consult specific chapters in the Constitution, to enable you to do the activities in this study guide (see 1.3 on the next page). You are therefore expected to obtain an updated version of the 1996 Constitution for this purpose.**

STUDY HINT

Sources cannot be read for you; you must read them yourself.

No matter how friendly the study guide, we cannot study for you. You must study yourself.

Some people have no experience of formal education, but do possess amazing knowledge and wisdom. Knowledge and wisdom do not come automatically, however, but come from continued study, including self-study.

1.3 Activities

This guide is designed in such a way that you can use it for examination purposes. If you work properly through the subjects dealt with in the guide and all the activities, as well as your assignments, you should not experience problems in the exam. When you work out the self-evaluation questions, you will notice that your text is not always “exam length” — that is, about four or five written pages. Don't worry about this. Your examiner does not expect you to write four pages on a theme that can be dealt with in half a page; such short questions may possibly be asked as a subsection of an exam question.

STUDY HINT

Don't try to do everything in one sitting.

Don't try to complete an activity all in one go. Use only the information that you have immediately available; namely, the information that you are busy with in the study guide. Then continue by studying the rest of the section and other sources, and go back to and add information that is relevant to an activity that you have already done as you encounter it.

2 Study hints

2.1 Method is important

When you prepare food, the taste and quality of the food will undoubtedly be improved if you use the correct method of preparation. In preparing food, two aspects are involved: the preparation and the product. The quality of the product depends, among other things, on the method used.

In the case of studying, the product of studying, namely the knowledge that you gain on the subject depends on the study method that you follow. Correct study methods will help you to understand the material better, help you remember it longer, and be able to reproduce it better in an exam.

In 1995 a book on study methods was published by Unisa Press which will be able to help you immensely to develop good study methods. The title is *Effective study* and it was written by WA van Schoor, EM Mille and D van der Merwe. You can phone (012) 429 2976 to confirm the price and order one.

3 A few additional hints

We hope that the following will be useful.

3.1 It's all about insight

Many students make the mistake of thinking that studying and memorising is the same thing. A bunch of facts that are learnt by rote constitute a poor answer — a heap of bricks hardly constitutes a good house — in the same way, a bunch of facts learnt by rote is hardly material for a good answer. You cannot merely reproduce; you must show insight. Insight, or understanding, is the result of long hours of work. Understanding unfortunately does not only consist of putting a bunch of facts together. Putting facts together is parrot work: simple memorisation work.

Yes, we must have control over facts, but there is more. To continue with our metaphor of the house and bricks — without bricks, and lots of them, you cannot build a house. However, building houses means putting bricks and other materials on top of each other according to a structure plan (“the big picture”). Insight means, among others, to fit facts together correctly. Facts are not insight. Insight is understanding the relationship between facts. You should thus be able to see the connection between facts.

Luckily insight gives pleasure and work satisfaction.

3.2 Understanding words and concepts

Insight begins with understanding words and concepts.

The easiest way to lose interest and concentration is to read words that you do not understand. Buy a dictionary or phone your lecturers, even if it is only to establish the meaning of one word that you cannot find in the dictionary.

3.3 Understand the big picture

In order to understand, you begin with the simple, the easily understandable, and then progress to the more difficult sections. Look for a picture of the whole. You can do this easily by studying the table of contents of the chapter. Take special note of the connection between main and subheadings. This will help you to get a holistic picture.

The whole can be a logical structure, but it can also form something like a story. We can for example understand the subject Public Funding as a story — the story of Joe Citizen's tax money. The main characters in this story are Joe Citizen's ten rand note, the parliament, the president and his cabinet — and then especially the Minister of Finances, the officials who support him or her, and still other less important role players. We will come back to this later.

3.4 Repeat!

The more you repeat a particular piece of work when you study it, the longer you will remember it and therefore the better you will perform in the exam.

Imagine that you are studying theme 2 of this section of the guide. You may try to study all the work during a single session, but you will find that you perform better if you repeat it several times. The more you repeat it, the better and longer you will remember it. The reason for this is physiological: the human brain works in such a way that things which are repeated are remembered better.

Think of a footpath in the veld. The more it is walked on, the clearer it becomes. You are not studying to pass the exams; you are studying to improve your knowledge, insight and ability. Writing exams is not a mountain to be climbed, it is merely a nuisance along the road.

3.5 Study environment

Ensure that your environment is suitable for studying. You should know by this time what works best for you. Make sure that you get the environment that you deserve.

If someone comes to visit, tell the person immediately that you are studying. This is your future that is on the line.

3.6 Concentration

Concentrate on the work you are studying.

When someone talks to you while there is a noise going on, you focus on what they are saying; you concentrate on their words and shift the noise to the background. The

same happens with concentration when you study. Concentrating means that you focus your thoughts on the work and not on other things while you are studying. You can change your environment in such a way that you experience little or no disturbance; see Study environment above. You must also direct your thoughts in such a way that they are fully focused on the work that you are studying.

It requires some practice to reach this level, and boils down once again to repetition. Remember the footpath!

In the beginning, you will probably get tired fairly quickly. Persevere, don't give up, you will get it right. The better you concentrate, the easier it will be for you to study. If I haven't practised, I will certainly not like to go for a long run. The same applies to studying. Your brain is not an empty drum into which you can simply throw facts; you must teach your brain, through practising, how to master knowledge.

Fatigue is easily recognisable: your thoughts wander easily, you repeat sections and they don't sink in, you recognise the page but not the work on it. When this happens, stop for a while, rest, and return later. In the beginning, you will get tired quickly. You will find that the periods in which you succeed in concentrating will gradually lengthen as you become more practised in your study methods.

3.7 Fitness

If you study continually for days or weeks, you neglect your body. Make sure that you get some exercise. *Mens sana in corpore sano* — a healthy mind in a healthy body.

3.8 Proper planning and use of time

You should realise that the study hints we are giving here will mean nothing to you if you begin cramming just before the exam. It is necessary that you plan enough time for you to go through your work at a leisurely pace and to get used to concentrating for long periods of time. But remember too to give yourself enough time for relaxation.

If you cram, you will get tired quickly and lose concentration.

3.9 Writing exams

Writing exams is something on its own, a separate step with its own prescriptions, since the written language makes its own demands.

In an exam, you must transfer the knowledge you have into writing; this means that your language must be correct and that your answers must be structured logically. Try to use paragraphs and sections correctly. The structure is determined by the question.

The most important rule of writing exams is: answer the question. Don't just reproduce a section from the study material.

As far as technique is concerned, we have a couple of hints for you:

EXAM HINTS

Take enough time to read through the question paper.

Read every question carefully.

Choose the questions that you want to answer.

Ensure that you understand **every word** in those questions.

Mark those questions.

Decide in what sequence you want to answer the questions.

Always answer the easiest questions first.

Keep an eye on the time.

Remember, persistence wins through! We hope that your studies will be successful!

THEME 1: NATURE OF RIGHTS AND OBLIGATIONS

Overview

In this theme we are going to establish the relationship between rights and obligations which exist as a basic foundation for public administration, and the means by which you as a student of Public Administration are going to understand that subject. This topic opens up a way into rather philosophical but important aspects of public administration. The philosophical dimension of **rights and obligations** is due to the fact that there are different views on what constitutes a right or an obligation. As such, there is no clear dividing line between the rights of one person and the obligations of another. This poses a great challenge to you as a student to get into the habit of thinking about the substance of your study material and any other material that you might read. You should not just read and absorb everything, but rather read and think about it at the same time. Not all printed matter that you read is true. The skill of reflexive reading is a tool that you will find invaluable in a career as public official. If you continue your studies, it will be of great value when you do your postgraduate studies to have a lateral and open-minded view so that you can analyse issues as required of a postgraduate student. The relationship that exists between the state and its citizens is a reciprocal relationship. In this chapter we are going to investigate its substance and significance for public administration.

To assist us in dealing with these issues there are some key questions that will be answered.

Case study. This case study brings you to the basic understanding of the kind of interactive dynamics involved in the existence of a state. This case is designed to help you in your position as a student to see the complexity of reciprocal relationships. It is important for you to look at the key questions below before reading the case study so as to make sense of the story in the context of the key study questions to be answered.

Key questions

- 1) What is the nature of public administration?
- 2) What environmental factors impact on public administration?
- 3) Who is involved in public administration and how do they relate to each other?
- 4) What determines or governs the nature of this relationship?
- 5) What are the two most important elements of the relationship between the different parties?

Key concepts

The above questions will be answered through the following key concepts:

- authority and power
- public administration
- Public Administration
- rights and obligations
- claims
- reciprocal relationship

In order to deal with these concepts we are going to make use of the following case study:

1 Key case study

Background

UnEx is the only university on a little island called Uto. It boasts a history of having produced outstanding scholars, some of whom have made considerable reputations for themselves in the community. The total population of the republic is 15 000 people. The university is partly owned by the state and the present government has a particular interest in it because the president is a former student of this institution. It follows therefore that everything which takes place there directly involves the present government. A report has just come to our attention on the latest events at the university:

There is a tense atmosphere at UnEx following the intervention of police in the strike and demonstration by the students which began last Friday. The university's security staff could not deal with the student numbers by yesterday and police had to be called in "to protect university property", said the public relations director. By the afternoon the clash between the police and the students left seven students and one policeman injured. According to police reports, rubber bullets and teargas were fired in order to disperse the students who were becoming violent. The students are placing the blame for yesterday's violence on the police and the university management. They claim that their protest was peaceful until the police tried to forcibly remove them from the university premises.

The strike which started last week is a protest over the increase in tuition fees and the simultaneous introduction of a supplementary examination fee. This implies that the first examinations are free, but that students will have to pay for supplementary examinations. "This is an unfair decision which is really designed to exclude other students from exercising their right to education", said the SRC president. On the other hand the principal had this to say: "It is within the jurisdiction of any tertiary institution and indeed its prerogative to set fee structures and levels as it finds necessary to meet costs. In any case in this institution we are committed to giving the best of education and service to our community and to the international community into which our graduates are accommodated every year, both as students and as employees. We will reserve the right to determine the best way of doing so. As for the violence of yesterday, it is unfortunate that some people were hurt. We also hope the students have learnt the lesson that we will not hesitate to use all possible means to protect university property, and the police are there to perform this function where we feel inadequate." Parents and other citizens of the island believe that the government should intervene by providing subsidies for university tuition fees to the students. Parliament is sitting today to determine any possible interventions. The other option is to ask for more financial help from the rubber company Steegum Rubber Pty Ltd which has been the dominant source of bursaries for students.

Negotiations continue as the students are threatening to continue their disruptive action if management does not meet their demands to eliminate all the unwanted changes unconditionally. On the other hand management is concerned about the amount of tuition time being lost.

(Own correspondent)

STUDY UNIT 1: A MODEL OF PUBLIC ADMINISTRATION

1 Introduction

This study unit deals with the background to the present state of public administration as represented by our Public Administration model. This will give an overview of the phenomenon and will show why we concentrate on specific matters to be dealt with in this study guide. In the module and particularly this study guide certain assumptions are made regarding the forces impacting on public administration.

Study objectives

At the end of this study unit you should be able to:

- 1) briefly define the concepts “public administration” and “Public Administration”
- 2) reproduce and analyse the model of Public Administration
- 3) identify the elements of public administration in terms of the model
- 4) show the relationship between society, the state, government and the private sector by using practical examples
- 5) list the general functions of government
- 6) describe and analyse the role of the constitution in public administration

2 What is “public administration”?

In any subject there are concepts which are unique to the particular field of study. The same is true of Public Administration. However, before proceeding it is necessary to define the concepts used in this subject. This delimits the field of study and clarifies why certain things are done the way they are done. For example, you might be asking yourself; why are there two different ways of writing the word “public administration”? This is about to be clarified here.

Public Administration with capital letters refers to the field of study. The capital letters help to show when the concept is being used as a name of a science. By the same token, we refer to Business Management, Psychology and even the names of people like Willem, Dikeledi, Charlotte, Themba. That then is the context through which you should understand the use of capital letters in the science of Public Administration. This is the very subject which you registered for here at UNISA. This

means that we (you and I) are involved in Public Administration (are we also involved in public administration?). This is the systematic analysis of the different processes which take place in society as a response to the needs of the people. Public Administration helps to analyse and explain why certain observable phenomena are what they are. Such scientific activities result in the publication of books and the different theories which we read in books on Public Administration.

On the other hand, **public administration** refers to the process whereby government delivers services to society and all its related activities and institutions. The goods and services provided by the government are aimed at improving the general welfare of society. Public administration also refers to all government-related activities, institutions and statutes. When we refer to the phenomenon we therefore use small letters “p a”. In the same manner, we refer to the process of walking, writing, sleeping with small letters. Such public administration results in the formulation of public policies, the enactment of the constitution, the building of roads, the presence of police, clinics and schools to name a few.

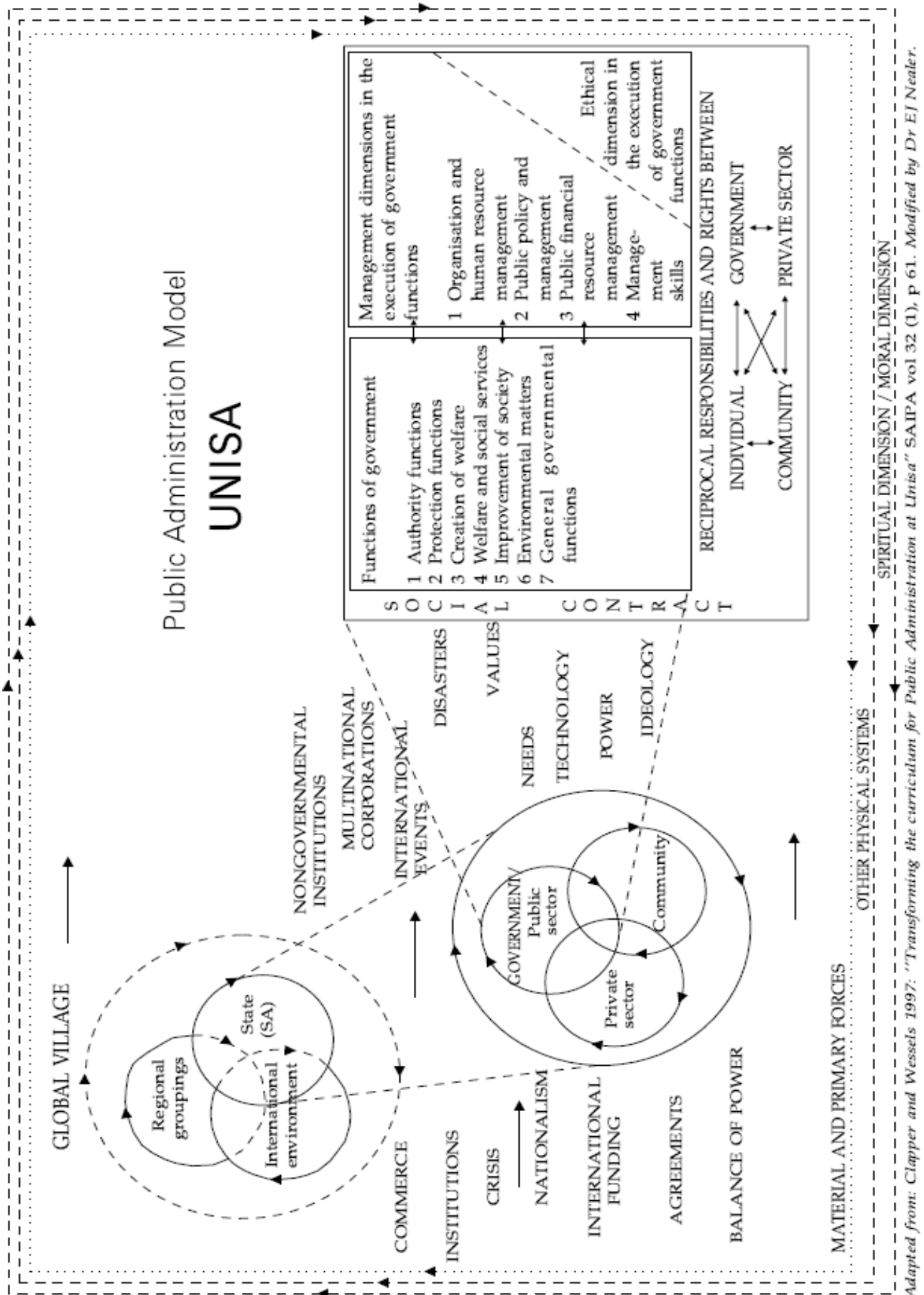
I hope this serves to explain why in the introduction I used the capital and small letters in different instances ... remember when I said it is not a misprint! Now that we understand the basic meaning of the term “public administration”, we can proceed to analyse it in a more scientific manner.

3 The Public Administration Model

See the diagram on page 6.

4 Elements of public administration

This model of Public Administration is an attempt to explain the relations between the different elements in public administration. These elements are the manifestations of society as we see it. The model therefore seeks to give a logical order and explanation to things and processes that we observe every day and yet are unable to give them a name or to understand why they happen.



The idea is that by the time you are through with this module you will be able to take a bird's eye view of the society you live in and be able to apply the principles and relations you learn about here in that particular situation. The model is an intricate combination of different elements which comprise public administration. Each of these is now analysed individually below in order to eventually outline the reciprocal relationship.

4.1 Society

The beginning of society marked the beginning of public administration as we know it today. This is based on the following assumption:

Society preceded the existence of public administration processes.

This derives from the social contract theories for understanding the origin of government and the state as we know them today. It is the assumption of these theories that in the beginning there were individuals who lived as small family units independent of each other. Over time it became necessary to interact and share resources as larger groups, which led ultimately to the formation of larger societies. The need for harmonious coexistence thus led to the formation of a centralised authoritative body. It is important to note that society is made up of individuals. In all references to society, we therefore imply the individual. When we refer to government providing society with services we are in fact referring to individuals. This marked the beginning of the political organisation of society into a state. This will be dealt with in more detail in later study units.

4.2 Government

Government is the machinery of the state.

This is based on the assumption that the state and the government are not synonymous. The state has a much broader scope which includes the government (see study unit 5). The functions of government are defined and determined by the state though the political element of government will make the functions vary slightly. Government came into existence as a mechanism which society could use to meet its needs. It responds to the needs of society and provides the following functions and services.

4.2.1 Government functions

Government is a dynamic political element of the state through which the following functions are performed to respond to societal needs:

- protection
- welfare and social services
- education
- wealth creation
- environmental protection and preservation

In addition, other services are also provided by government in conjunction with the private sector. These services are provided in a dynamic environment. The government functions and services will be dealt with in the relevant modules. The government performs its functions within the framework of the constitution. In this case it is enough to know that the government functions are part of the model of Public Administration.

4.3 Private sector

The private sector is both part and product of organised society.

This means that the nature of activities which arose as a result of the development of political society led to the need to distinguish between private and public goods and services. The provision of goods and services is a shared function between the state and private business. The extent to which the government is involved in economic activities depends on the political ideology of the government of the day. For example, in the case study of UnEx it is said that the state has a hand in the running of the university. However, the extent of the involvement depends on the interests of the particular government.

The private sector is in business to generate profit. The government on the other hand can only benefit through taxes paid by the people. It is therefore to the benefit of the government to have more private businesses from which to get taxes. The private sector is of course composed of citizens who are also part of the state. Society also benefits directly through the jobs created by the private sector as well as other financial assistance as part of community initiatives of the private sector. This is the case in Uto where a private rubber company gives bursaries to some UnEx students.

4.4 The constitution

The relations and interactions among the different individual and corporate members of the state are regulated centrally.

The constitution is the utmost authority and framework for the existence of the state, its members and its machinery. It defines the roles and power limits for all the different

members of the community encompassed by the state. The extent to which that happens is of course not absolute and will depend on the nature of the established political system.

Read chapters 1 and 2 of the Constitution, 1996, to see how it shapes the manifestation of the South African government structures as we observe them.

4.5 The global village

The state is part of a larger international environment.

This means that the state exists as part of a community of other states. In that context there are international rules and regulations which are equivalent to the constitution at the national level. There are a number of international institutions which South Africa has become part of since the change from the pre-1994 government system. This means that racial segregation and other violations of human rights which were being perpetrated by the pre-1994 government are not acceptable in terms of the laws of the international community known as the global village. Some examples of organisations of which states are members are:

the United Nations, the Organisation of African Unity (OAU), the Southern African Development Community (SADC) and the European Community.

The activities of a state have an impact on the related activities of other states. On the other hand the activities of the international community also impact on the individual state. For example, the poverty of African countries to the north of South Africa has impacted on the South African economy to a large extent through the influx of illegal and legal immigrants into the country.

4.6 Environmental factors

Dynamic forces are constantly impacting on public administration.

The activities of the government are collectively referred to as public administration. These activities are governed and influenced by such forces as:

- needs of society
- ethical values
- availability of resources

When looking at the schematic presentation of the Public Administration model it should be apparent to you that there is no element among the above which stands alone as an independent entity. Rather, all the elements are dynamic and interactive

in nature. This means that for our purposes, we should look at society as a platform for all activities and relationships in public administration.

The needs of society are divided into two types: those which are indivisible and those which are **divisible**. The first class of needs, also known as the need for public goods and services, cannot be provided exclusively to some people rather than others. On the other hand, divisible or private goods and services can be provided exclusively by virtue of some or other criteria. Accordingly it becomes necessary to have institutions to provide these goods by separate means. That is to say, **public goods** are provided by the government while **private goods** are provided by the private sector. The motive for the private sector is potential gain in the form of profit. On the other hand, the government operates on near-zero profit. The link among the three main elements in the state is the constitution. As you can see in the model, the constitution runs right round and makes a complete circuit of the role-players. Meanwhile, there is also a very active element on the outskirts, the global village and other environmental forces. The inward facing arrows show the constant interdependence of activities between the two spheres.

ACTIVITY 1.1

Read the above case study on the clash at UnEx campus and respond to the following:

1. Identify all the role-players in the case according to the Public Administration model.

2. How is the international community affected by the low fees, according to the principal?

3. Uto is so small that it has a population of 15 000 people, would you consider it to be a state? Give reasons.

You should have had no problems identifying the different role-players in the case study as the following:

- the state
- society at large
- the university community
- the government in the form of the police
- the private sector

I hope you noted that the size of a population does not determine the status of a state. This will be dealt with in more detail in study unit 5.

5 Review

The model of Public Administration should be understood as a way of understanding the various dynamic factors which make up the foundations of public administration. It should be clear to you by now that there is no isolated activity called public administration. Rather it is a network of complex activities which all work towards achieving a single objective — meeting the needs of society. From this study unit the following can therefore be concluded about the elements of public administration:

- “P(p)ublic A(a)dministration” has a dual meaning in that it refers to both the discipline and the practice.
- Public administration (in the sense of its practical manifestation) can be studied by means of a model of Public Administration which seeks to establish the various institutional relationships.
- Society both pre-existed and created the state and its institutions.
- A state is different from, and has a wider scope than government.
- Government is a mechanism through which the state is able to respond to and satisfy needs.

- The private sector is an element of society and therefore of the state. Its functioning in relation to the government is beneficial to both the government and to society as a whole.
- The constitution serves as a centralised regulatory mechanism by which the relations in which the different role-players exercise their power are defined and regulated.
- A state is a member of the global village which affects and is affected by internal activities, that is to say, by the activities of members of the society which it encompasses.
- The activities of public administration also take place in a dynamic environment of other factors, such as values, beliefs, needs and ethics.

STUDY UNIT 2: UNDERSTANDING RIGHTS

1 Introduction

It is not an easy task to enter into a debate about the all too familiar concept and phenomenon of rights. It is a very fluid and yet one of the most widely and consistently debated concepts in society, especially in political and governmental circles.

Study objectives

At the end of this study unit you should be able to:

- 1) define “rights’
- 2) show the different premises (justifications) on which rights are claimed
- 3) describe the classification of rights
- 4) identify the claims to rights in practical life

2 What is a right?

Before we begin with this section, I would like you to do the following:

ACTIVITY 2.1

Read the above case study on the clash at UnEx campus and respond to the following:

1. Look up the use of the word “**rights**” in newspapers and/or magazines and jot down the sentence in which it is used.

2. Repeat this exercise until you have at least five (5) different sentences.

-
-
3. Reflect on the meaning of the sentences you jotted down, and give your own definition of the meaning of rights. Rights can be defined as:

I hope you found this exercise stimulating. I also know that the task of finding a definition from the way a concept is used is a difficult if not impossible thing to do, especially in the social sciences, which include our subject. As you may have discovered, in the above exercise the concept “rights” is used in a rather ill-defined manner so that in some cases opposing or conflicting sides can each claim to have a certain right which is not agreeable to the other side. While most people are able to use the term correctly, few are able to express its meaning. This is what we are going to do in this study unit.

A right is an entitlement. This means that the holder of a right is justified to make a claim regarding the exercise or enjoyment of such a right. Rights are based on the ability to justify the claim by one means or another. Different people hold different kinds of rights at any given time. In addition, the differences in the rights may be and in most cases are found to be conflicting. This means that the occurrence of rights in people’s lives has to do with the ability to have a claim to such a right. The interpretation and claim of an entitlement depends on factors such as:

- **circumstances**
 - The circumstances determine whether or not it is possible for all parties to lay successful claim to a right. Factors like resource availability play an important role in this case. In some cases, rights may compete for the same resources and could not possibly be satisfied all at the same time. In this case, the relative urgency of the issues will be determined and priorities will be set. For example, in the case study, if the financial resources of the Uto government amount to a total of R50 000 and they had to choose between subsidising the students and feeding a group of starving citizens with the money, they would not be able to countenance each group’s claim to their meagre resources in

equal measure but would have to make a choice favouring one above the other.

- **political factors**

- The distribution of power in society determines whose rights are most frequently exercised successfully. Ideally this should not be the case in a democracy, but that is what happens in reality. Power translates into the ability to get what those who possess it want when they want it. Money can also be a source of such power. Holding a position of eminence is also a good source of power. Do you think the students of UnEx should have called the police to protect them against the campus security staff? Do you suppose they would get the same response as the university authorities got by calling the police first?

While the allocation of rights may be a simple matter (Bill of Rights), the exercise of such rights in practice has to prevail in the presence of many and in most cases opposing or competing factors. This is usually the case in circumstances where more than one claim is made at the same time. In such instances a conflict arises so that only one claim can be satisfied at the time. For example, if Susanna owes John R10 and also owes Temba R10, both John and Temba can claim their money at the same time. However they find Susanna with only R10. This means that there is a conflict of the right to R10 for the two. Only one person can enjoy that right at this point in time. Let's say Susanna had promised to pay back Temba on this particular day and that is why he is there even though he is not desperate for it. On the other hand, John's money was only due two days later but his wallet has been stolen and he needs money for bus fare, which is why he is there two days earlier. That conflict will be easier to solve as Susanna can give the money to John. What if both of them were equally desperate? Try to solve that one! This is also typical in a situation where one opposition party is very strong. It will have the ability to influence the manner in which the ruling party allocates resources.

Rights exist and every single person has a claim to a right at one point or another. However the weight of each claim depends on the other important element: **justification**.

2.1 Justification of rights

The Concise Oxford Dictionary defines justify as being "[to] demonstrate the correctness of an assertion [or claim]".

Justification is the basis upon which an individual makes a claim to a certain right. In other words, individuals have to show adequate grounds for a claim to a right. There are different sources of justification:

2.1.1 Institutional justification

This is based on the internal arrangements of a particular institutional setting. An institution is any arrangement of protocol which is found in society regardless of size. Examples of institutions include the following:

- family
- schools and colleges
- organisations or workplaces
- churches
- government structures
- constitutions

Justifications which are defined in an institutional setting are only applicable within the limited area of such an institution's justification. Such justification translates into **rules, regulations and procedures** applicable to all members of the institution. This means that if a member leaves the institution such justification is no longer applicable.

In the case of the UnEx campus, only the students who are registered with the institution are affected by the changes introduced by management. If any one of the students were to opt to leave the university and go to work or to another institution, then the whole strike would not apply to them.

2.1.2 Statutory justification

These are the rights attached to the enforcement of and respect for statutes. The statutory nature of such justifications makes them more powerful and most prevalent. Such justification is applicable to all the rights which are nationally and internationally recognised in statutes and other provisions. Examples include the following:

- constitutions
- legislation (Acts of Parliament)
- international conventions and provision (United Nations Universal Declaration of Human Rights, International Labour Organisation)

Policies and programmes are made at the national, provincial and local government levels. The Bill of Rights is the most significant legal provision on the protection of human rights in South Africa. International laws are also equally applicable to citizens

of a country. This implies that while states are free to exercise their sovereignty, they are bound by the laws of the international arena, which they have to adapt for their own unique circumstances. Agenda 21 is a United Nations resolution and commitment to preserve the environment and human dignity through the protection of the environment. All countries have since been making an effort to adopt the principles at the various levels of government.

2.1.3 Moral justification

The existence of a society implies that the members of that society desire to live in harmony with each other. This means that there are well-defined and inherent elements by which good and bad are distinguished from each other.

In principle, all citizens of a society will strive to maintain goodwill between and among fellow citizens. Religion plays a significant role in reinforcing the moral values of a society and the desire to do that which is good to others. A claim to a right thus has a basis claim which is guided by the principle of social harmony and human coexistence. It is a highly subjective justification which depends on individual respect for that which is right. In other words, a claim based on a moral justification alone will not necessarily be respected unless there is an element of desire for that which is good. Obviously not all citizens desire to do good at all times. In the above example of John and Temba, there is no legal contract which gives details about who should be paid first. Accordingly the solution depends on the goodwill of the parties.

In the case of the UnEx campus, not all the students involved in the strike are really desperate and cannot afford the raised fees. What then do you think is the basis or justification for this strike? Some would say it is right to be in solidarity with fellow students in their plight and others would say students like to cause chaos ... what is your position?

2.2 Classification of rights

The attempt to come up with a clear definition resulted in the logical classification of rights which follows. While dealing with this section it is important and indeed imperative for you to realise that the classes are analytical tools and that they are neither rigid nor necessarily correct. This means that you have to keep an open mind at all times. You should also think of the possible applicability of these classifications in practice. Rights are classified as follows:

- negative/natural rights
- positive rights

2.2.1 Negative/Natural rights

These are also known as **natural rights**. Natural rights are part of life. They are the inalienable rights which each person has by being born and being alive. They are not man-made and are in existence for the purpose of protecting and safeguarding the life of individuals (Aasgard 1997 website). These natural rights form the basis for the existence of international organisations like the United Nations and its laws, for example the United Nations Universal Declaration of Human Rights (1948). In Article 1 it says: "All human beings are born free and equal in dignity and rights". This means that natural rights fall outside the framework of institutions. The natural rights include those to life, human dignity and independence. They are also commonly known as human rights.

Natural rights fall outside the framework of institutional settings. They precede and stand above institutions of society like the state, the constitution and even the family. Natural rights are based on natural law. According to the famous Roman orator and statesman, Cicero, natural law is eternal and immutable for all nations and for all time. In the same vein, St Thomas Aquinas emphasised that this law is a higher law than that of institutions like the state (Bowie & Simon 1977:59).

Natural laws and rights are therefore regarded as the standard on which all other institutional laws and rights are based and against which they are measured. Natural rights are therefore a given for every individual and cannot be taken away from a person. They are not determined by status or position. This means that every individual has equal access to natural rights. No individual can choose to enjoy or not to enjoy such rights. Such rights make things like mercy killing illegal. For example if someone were to say to you: "I give up my right to life. Please take my life", it would still not give you the right to kill that person.

The term "negative rights" is also applied to refer to natural rights. In most literature reference is made to negative in contrast with positive rights. You should therefore realise that negative rights imply natural rights (Nel & Bezuidenhout 1997:4).

Like natural rights, negative rights are based on the principle that each person is a sovereign power in his/her own right. These rights are enjoyed by imposing an obligation on other people to respect or refrain from interfering with people's enjoyment of a right to which they are entitled. This means that negative rights are a restraint in that they define boundaries for the exercise of individual freedoms (Bowie & Simon 1977:63–65). They play an important role in protecting individual freedom and individualism.

While restraining people from acting in a certain manner, negative rights do not impose any direct duties of action on people to promote such rights. This means that if A has a right to life, it is not up to B to give the life but that B should not injure or take A's life.

2.2.2 Positive/Legal rights

Positive rights place an obligation on people to actively participate in enabling any individual to enjoy such rights as he/she is entitled to. This means that in the case of this particular type of rights there is someone who is supposed to act so that such a right can be enjoyed. Positive rights are also referred to as legal rights (Freysen in Wessels & Pauw 1999:31). This means that the obligation to promote such rights is enforceable by law. In most cases all negative rights tend to become positive rights once they are enforced by law (Wessels & Pauw 1999:32). For example, murder is an offence against the natural right to life. However, it is a punishable crime in the laws of the state. This means that the right to life can be regarded as being a positive or legal right.

ACTIVITY 2.2

In our case of the UnEx there are some identifiable cases of positive and negative rights.

1. Try to identify and list them.

2. Which cases show a conflict of rights?

From the above activity you are likely to have identified at least three different parties to the conflict. Each of them does have rights which are in conflict with those of the other party or parties.

Did you think along the following lines?

- The **students'** right to education
- The **university management's** right to protection of property and self-determination / independence
- The rights of the **police**

3 Rights in public administration

3.1 The constitution and rights

The nature of public administration is such that it is surrounded by such things as a legal environment. From the model in study unit 1 we learnt that the state as a political society is governed by rules and it is there to maintain law and order (MacIver 1966:5). This is done by means of the state machinery, namely the government. However it is imperative at all times for government to recognise the fact that it only exists by and through the will of the people. This is a principle by which the power of government should be limited.

The constitution serves as a mechanism for protecting citizens against the arbitrary exercise of power by the government. This means that the rule of law should always prevail in the everyday work of a public official. In a democratic state the constitution is held in highest esteem as serving the purpose of protecting the citizens against violation of their rights through excessive use or abuse of state power by the government. The Constitution, 1996, is a constitution in which the rights of individuals are well protected. While it might happen that some governments violate their own constitution, this should not be the case in a constitutional state like South Africa. In such a state, the changes to the constitution are only done by specific procedure of majorities. This is not the case in other forms of government where the legislature is the supreme authority. In such a case it is up to the government to amend the constitution to suit their policies and agendas (Basson 1995:7–8).

There is nothing more fitting to open this part of the issue of rights enshrined in the Constitution, 1996, than the words of Dion Basson: "... there is little doubt that the most important characteristic of [the] constitution (from the point of view of the people in the state for whose benefit the constitution is created in the first place) is the Bill of Rights" (1995:xxvii). It is designed to protect the rights and freedoms of the citizens from abuse by the government. In addition, it serves to safeguard individuals' rights against abuse by one another.

3.1.1 The Bill of Rights

The Bill of Rights was first introduced in the Interim Constitution, Act 200 of 1993. It is now contained in chapter 2 of the Constitution, 1996. This Bill contains all the rights of the citizens of a state. In s 7 it is stated that the Bill of Rights is the cornerstone of democracy and answers the need to respect, protect and promote citizens' rights. Based on the supremacy of the Constitution, 1996, the provisions of the Bill are applicable and binding to all organs of the state. By referring to organs of the state, we are also referring to the individual officials employed in different functions and departments of government. This implies that the individual official should be wary of the possible violation of citizens' rights in the performance of their duties.

4 Review

It can be concluded that in any society there are parties in conflict at all times. The nature of rights is such that while they are a claim for individuals to get something, they are not always clear-cut. The conflicts about rights, claims and the limited nature of government resources lead to the need for priorities to be made as to who gets what, when and how. This same situation prevails in the routine pursuits of public administration where decisions have to be made regarding the needs of the people. While it is every individual's right to get his/ her needs satisfied, some will have their needs satisfied more than others. Power and money are important determinants in practice, though this should not be the case where the principles of natural rights are concerned. Natural rights are held by all members of society on the premise that all people are born free and equal before the law. Ignorance is directly linked to power since it results in not getting one's rights satisfied. It is those who can identify and agitate for their rights who get the government to act. The Constitution, 1996, as the supreme authority in South Africa sets limits to government's power over the citizens. Accordingly the Bill of Rights in the Constitution, 1996, is an important provision which defines all the rights of citizens. In dealing with the issue of rights one needs to be aware that there are also obligations linked to rights. This is the subject of the next study unit ... enjoy it!

STUDY UNIT 3: THE CONVERSE OF RIGHTS: OBLIGATIONS

1 Introduction

Like a coin there are two sides to a relationship. A relationship is defined as an interaction or link between two or more identifiable entities. We learnt in the first study unit that rights are one side to a reciprocal relationship. It is therefore necessary that the other side of this relationship be established and discussed.

Study objectives

At the end of this study unit you should be able to:

- 1) briefly explain the meaning and nature of obligations
- 2) distinguish between political and moral obligations
- 3) distinguish between rights and obligations
- 4) describe a reciprocal relationship by using practical examples
- 5) show the relationship between rights and obligations in the constitution

2 Meaning and nature of obligations

An obligation is to be understood in the context of the interactive or reciprocal nature of a relationship as described above. According to Steinberg (1978:11) an obligation is a kind of morally compelling commitment whereby one person is bound in terms of a set of moral rules or norms to do something for another person. An obligation should therefore be understood as being part of an interaction between two or more people. As Steinberg puts it: "An obligation is, therefore, to be understood as a relationship between a person, the performance of an act, and another person to whom the act to be performed is owed" (1978:11). Whereas the constitution specifically lists the different rights, it does not address obligations directly. This is because the existence of obligations is implied. In other words, the fact that someone is expected to respect your right to privacy means that such a person has an obligation to do so. If you read further on in the constitution, however, you will notice that the different duties of the organs of the state are their obligations. Chapter 10 deals with the role and obligations of public administration, which imply the obligations of individual public officials.

2.1 Obligations and rights

For the purposes of this theme the meaning of obligations should not be regarded as being separate from that of rights. **While a right is a claim, an obligation on the other hand is a commitment.**

Obligations are therefore a way of ensuring that the claim to a right is realised in the sense of being given the force of implementation. Just like rights there are bound to be conflicts and problems in the exercise and fulfilment of an obligation. At UnEx it was reported that students were attacked by the police in a bid by them to protect university property. Is this not in direct conflict with the students' rights? If so, determine which ones. On the other hand, since the principal boasts the university's right to freely determine the best ways to provide education, who then has the obligation and what is it? This is really food for thought.

Like any other relationship, there are bound to be subjective judgments to one's understanding of what an obligation is. However there are some which clearly point to specific parties. As you progress in this study guide, you will learn the specific relationship which exists between the state and the citizens and how such a relationship borders on the reciprocal exchange and flow of rights and obligations between the two sides.

An obligation in relation to rights is a duty for one party to protect the enjoyment of specific positive rights by another party. It is therefore the positive action required of such a party in enabling the enjoyment of rights by the other party. In this context, obligation involves the following typical duties:

2.1.1 To avoid withholding or violating a right

This is particularly applicable to the exercise of negative rights. It is important to note that obligations are not confined to positive rights only. In the case of negative rights the need for parties not to obstruct the exercising of rights places an obligation on such parties not to act in a calculated manner to withhold such rights.

2.1.2 To protect such a right

Section 8 of the Constitution, 1996 explicitly places an obligation on different government institutions to protect all rights included in chapter 2 on the Bill of Rights:

This means that the institution of the state, such as the legislatures at all levels, as well as executive institutions like the police, have an obligation to protect all human rights. This includes the need to act directly and to provide conditions necessary for such protection to take place.

2.1.3 To promote rights

This is the case where state machinery is active in the protection of rights where deprivation or violation of rights is seen to exist. In 1994 the Government of National Unity adopted the well-known Reconstruction and Development Programme (RDP) as a response to the inadequacies and problems of inequality. What, in your opinion, are the essential rights which were being addressed and promoted by this policy? It is clear that the comprehensive nature of the RDP policy was aimed by the government at fulfilling its obligations with regard to the Bill of Rights.

In addition, in s 7 of the Constitution, 1996, there is a provision where all government machinery is bound, and therefore obligated to enable the enjoyment of all rights by individuals as provided in the Bill of Rights.

These three points on obligation clearly call for proactive action on the part of the committed person to act and make it possible for positive rights to be exercised.

ACTIVITY 3.1

Read:

- (a) the Bill of Rights in the Constitution, 1996.
- (b) the case of UnEx campus and respond to the questions that follow below:

1. Identify the provision of individual rights to **freedom** and **security**.

2. List the different state mechanisms and institutions which have an obligation with respect to these rights.

3. List the obligations of the following in the UnEx case: police, management and students.

SRC

Principal and university management

Police

From this activity it is clear that there is a direct relationship between rights and obligations. In the findings you could go back and compare the exercise with activity 2.2 on the conflict of rights in study unit two. You will find that there is a direct link between the conflicts in both cases.

2.2 Classification of obligations

Obligations are classified by Steinberg as being either moral or political (1977:10–21):

2.2.1 Political obligations

The meaning of politics must be understood in order to understand the political context of obligations. Politics is an institutionalised relationship that is maintained with the aim of establishing objectives, the process of resource allocation to attain state goals, and making policies. In the context of this study guide political obligations are intertwined with the role of the state in promoting rights of citizens. Political obligations also include the obligations placed upon citizens to enable the state to uphold individual and group rights. Where rights are found to be in conflict, it is also the obligation of the state to provide the necessary adjudication (Bowie & Simon 1977:147–8). Political obligations are therefore institutionalised and enforceable. Every citizen above a particular

minimum income level is obligated to pay income tax on his/ her income. Any attempt to avoid payment of taxes is illegal and punishable by law.

In South Africa there are institutions in place which are aimed at promoting not only rights but also the fulfilment of obligations. Political obligations are also found in the relationships between employer and employee.

2.2.2 Moral obligations

According to Steinberg (1977:11–12) the moral side of obligations refers to a moral requirement. This kind of obligation only arises out of personal commitment and is linked to the institution only in the most remote manner. The most obvious institution that takes care of moral obligations is religion. Moral obligation is different from political obligation in that the latter is linked to enforcement and sanction whereas the former is based on voluntary commitment.

ACTIVITY 3.1

Read the following scenario and respond to the following questions:

Mashudu's friend, Nkhensani has asked him if he could come and look after his house while he is away for the weekend. After acceding to his friend's request and seeing him off at the airport, he receives an invitation to his cousin's party for the same weekend. The whole family is going to be present including his father who always emphasises that "blood is thicker than water". Mashudu is in a dilemma and does not know what to do. He approaches you for advice. Consider the following issues in your advice:

He could stay and not go to the party.

Go to the party briefly and come back ... but what if he fails to get back — it's a Saturday night!

1. Could he ask you to stay in the house on his behalf?

2. What in your opinion is the most pressing of the two alternatives?

The central issue in this example is that there is a conflict of both political and moral obligations. I hope you were able to identify some politics in the whole story. On one hand the issue of loyalty to a friend (and maybe he is returning a favour) brings out some politics. The father's power and values are also a political element. While the party might be enticing to Mashudu, he has already made a commitment to his friend. On its own this consideration should persuade him not to go to the party. However, there is the issue of "family comes first" which his father impresses on him every day. Then he should go! The conflict makes a situation very difficult to the decision maker as you will have experienced in cases such as this. However, like rights, obligations are fulfilled on the basis of priorities. In the case of moral obligations there is really no single option for all people. The choices and judgments as to what is and what is not a priority depends on individuals. That is why it is difficult to advise Mashudu in his dilemma.

3 Obligations in practice

Essentially, there is no detailed provision in the Constitution, 1996, on the issue of obligations. However, this is just an indication of the fact that the existence of rights implies the existence of obligations. According to Henkin (1990:3), the idea of human rights implies the obligation of society to satisfy claims to rights. For the public official, by recognising the rights of individuals as provided in the Constitution, 1996, it is up to the official to decide which of these fall within the obligations of an official.

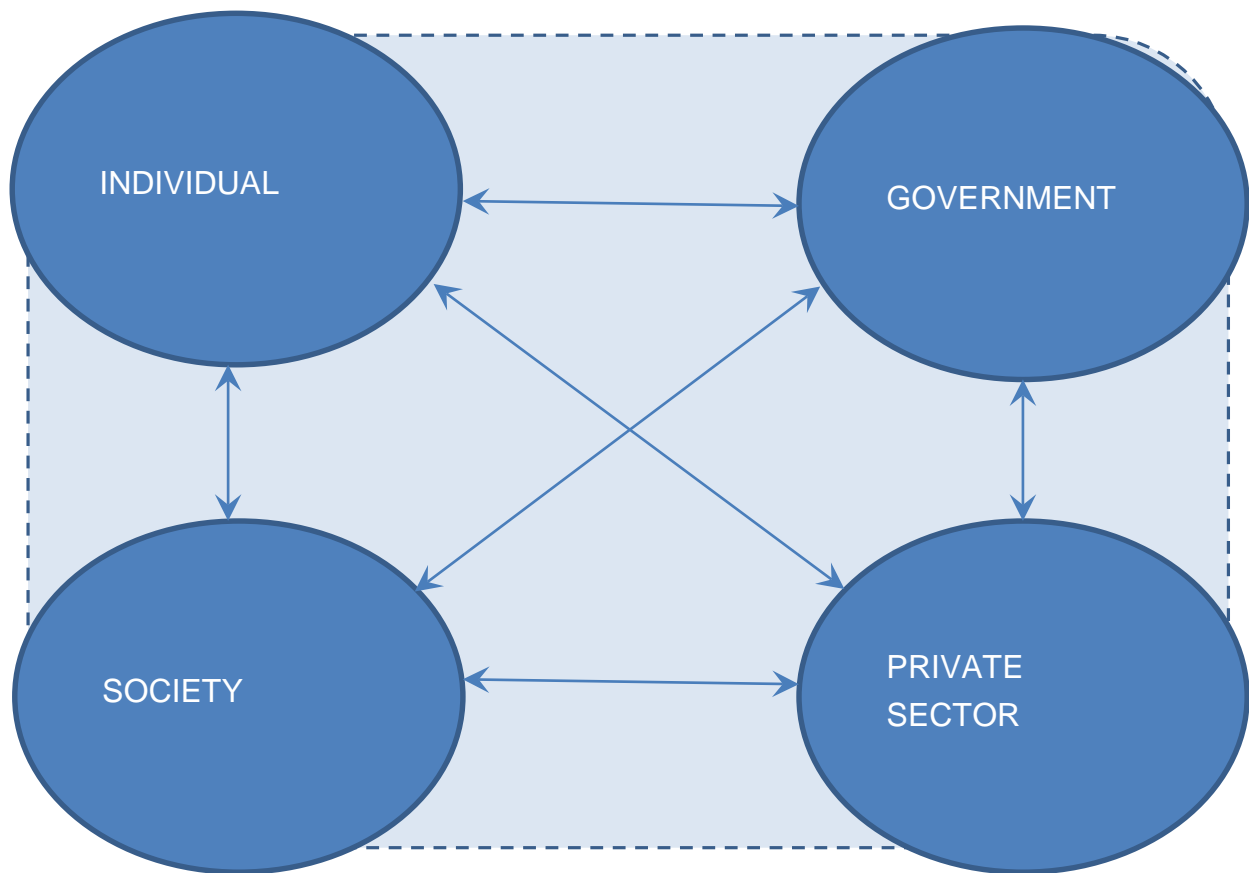
4 Review

I hope you learnt a lot in this study unit. To be sure of this we should just review the important points covered in this study unit:

- Obligations are an inevitable corollary of rights, that is, obligations are inseparable from rights.
- Obligations entail positive action to which a party is committed to enable, protect or promote the enjoyment of a right by another party.
- Obligations are exercised on either political or moral grounds, or both.
- The individual official should be sensitive to individual rights which place him/her under an obligation.

RIGHTS AND OBLIGATIONS IN A STATE

Constitution — social contract



Self-evaluation questions

- 1) Briefly describe the meaning of the concept “obligation” with reference to a practical example. Use a diagram to illustrate this — use your imagination.
- 2) Which are the two types of obligations in public administration?
- 3) Which of the above two kinds of obligations tend to pose a greater challenge to the life and work of a public official? Use an example to show why this is so.
- 4) What is the nature of the relationship between rights and obligations?
- 5) How does the Bill of Rights impact on the life of citizens in terms of obligations?
- 6) What in your opinion are some of the obligations of citizens to the government?
- 7) Do you think there is a balance between the obligations of society and those of the government? Which of the two in your opinion is more efficient in fulfilling its obligations ... or are they on an equal footing?

THEME 2: THE ORIGIN OF THE STATE

Overview

The foundations of public administration lie in the relationships of politics, power, authority and the articulation and satisfaction of societal needs. This relationship is best understood by revisiting the views and thoughts on the origin of the state. The state is an important and indeed a fundamental element in understanding public administration. This very important concept will be dealt with in more detail in theme 3. In the endeavour to better understand the manifestation of the state, many a scholar has tried to discover the origins of this phenomenon, which plays such an important part in our lives. The research effort made to this end is an age-old process that has resulted in works that have withstood the test of time as tools for logically explaining the origins of the state. In this theme we briefly look at some of the early works on the social contract theory of the state. This will only be done to the point of presenting the most basic explanation for the manifestations of public administration today. In other words, we will not be reverting to and interlarding or confusing our subject with Political Science; rather we are borrowing this very important concept for Public Administration. This means that next time you encounter the concepts of the social contract theory you will not turn a blind eye and simply ignore them but will try to find a place for them in your work situation where you are a party to the contract, or as a tool for understanding the processes, if you continue as a Public Administration student and scholar. In order to utilise this theory adequately there are some questions which should guide us:

Key questions

- 1) What is theory?
- 2) Which are the social contract theories?
- 3) What is Hobbes' theory of the state?
- 4) What is Locke's theory?
- 5) What is Rousseau's version of the theory of the state?
- 6) What does Kant say about the state?
- 7) How do these theories link to Public Administration?
- 8) How does the social contract theory manifest itself in public administration?
- 9) To what extent does the South African situation conform to the tenets of social contract theory?

Key concepts

- social contract
- theory
- Hobbes
- state of nature
- egoist
- Locke
- liberty
- private property
- Rousseau
- Kant
- freedom

STUDY UNIT 4: SOCIAL CONTRACT THEORY OF THE STATE

1 Introduction

Theory in general has an important function in the scholarly works of all science. In this module we concentrate on the analysis of public administration as embedded in the foundations of the state. Social contract theories serve to give a more or less logical reasoning to the nature of relations and interactions which are studied in Public Administration. It is therefore important that you as a student keep an open eye for any shortfalls in the theories adapted here. I hasten to add that for any academic discipline, there is no theory which is the ultimate answer. This means that other answers should be sought in the whole scientific quest for deeper knowledge. Consequently there is a likelihood that a theory is bound to be replaced or modified by other theories at some point or other. Similarly, while you use the social contract theory as a Public Administration student you should also be seeking new knowledge about the subject matter ... who knows, the next Rousseau might come from UNISA!

Study objectives

At the end of this study unit you should be able to:

- 1) briefly define “theory”
- 2) describe the substance of social contract theory
- 3) briefly outline the theses of the different social contract theorists
- 4) evaluate the efficacy/validity of the theory in Public Administration
- 5) evaluate the efficacy/validity of the theories regarding the nature of political relations in a state

2 What is theory

According to Roberts (1977:213), theory is an integrated set of laws or generalisations by which explanations of some existing phenomena or set of knowledge are made. Theory results in the development of generalisations and logical ordering of facts into integrated explanations. Theory is therefore used to explain the realities which surround the theorist as a source of wonder for him. It serves to answer the “why” of an enquiring mind (Hanekom & Wessels 1995:3). In public administration theory serves the function of improving the understanding of the milieu in which the

phenomenon takes place. In other words, a public official would make use of theory as a guideline on the best possible behaviour in a given situation. For the purpose of this particular module it is not necessary for us to go into too much detail. Against this background of the role of theory in public administration and Public Administration, I hope you now have the basis for tackling the theory of the state that we are going to deal with in this section.

3 Theory of the state in Public Administration

In dealing with the theory of the state, a number of different scholars from ancient Greek times produced work which is collectively known as the Contractarian View. The basis for the work on social contract theory can be traced back to the work of such early Greek philosophers as Plato and Socrates (Medina 1990:3). It is a basic tenet of the relevant philosophy that the state is a product of a contract among members of a society by which they establish an authoritative body. This is known as **the contract of society**. On the other hand, there is also the issue of the **contract of government** where the people elect a certain body periodically to be in authority (Medina 1990:5). Closely related to this notion of a contract is the idea of free will, choice and consent. The issue of consent is dealt with in the works of St Thomas Aquinas and St Augustine (Medina 1990:3). In this study guide we are only concerned with the contract theory as a way of understanding the structures and interactions of government institutions. I advise you to look at the following brief description of contract theories in the context of analytical tools with which you should be able to measure the extent of contractual rights and obligations in public administration. In order to understand the theory of the state, a number of social contract theories will be briefly dealt with below.

3.1 Thomas Hobbes (1588–1679)

Hobbes was an English political philosopher who lived through the civil wars of England. It is said that the times of war influenced his line of thought about human beings (Bowie & Simon 1977:13). Hobbes' view of human nature is that of a mechanical being who is only driven by natural desires and appetites and no emotion at all. Hobbes advocates the formation of a state as a way of regulating the brutal behaviour of humans in a state of nature. Without a state, he contends, life in a state of nature would be "solitary, poor, nasty, brutish and short" (Bowie & Simon 1977:14). He bases his arguments on the fact that people come into conflict with each other in the process of competing for scarce resources, and that in the absence of a state only the strongest will survive the conflict — survival of the fittest. This conflict, he contends,

is the result of people's selfishness, which therefore needs to be curbed by an authority in the form of a state.

Hobbes' arguments are not based on the actual existence of a state of nature. Rather, Hobbes treats a state of nature as a condition to which society would degenerate in the absence of the state. He is therefore arguing for the continued existence of an already existing state. The state of nature is thus a hypothetical condition by which to justify and explain the existence of the state.

3.1.1 Role of the state

According to Hobbes, the function of the state is to provide security and regulate behaviour so as to protect human beings against each other. However, Hobbes' view is extreme in the sense that he advocates a state with absolute authority over humans. He has a purely utilitarian view of the state (Bowie & Simon 1977:18). Ebenstein and Ebenstein (1991:404–405) summarise the role of the state according to Hobbes into seven main points:

- The contract by which government is formed is a result of complete surrender of power and authority by the people to the sovereign.
- The state should provide security for the benefit of all citizens.
- The state is an authoritarian figure for regulating a life of law and order where all are equal before the law. However, human beings are free to live freely in a laissez faire or completely unregulated economy.
- The sovereign is a supreme administrator and lawmaker.
- The state should only engage in war as long as it is necessary to defend its citizens.
- The law is for people to obey but they do not need to believe in it.
- There is room for individuals to resist that which they do not believe in.

Essentially, Hobbes is an advocate of human equality, natural rights and unanimous consent to the establishment of the state. The contract in Hobbes' definition is a contract between people rather than between the government (sovereign) and the people.

The function of the state is to protect people from their egoistic tendencies. It is an instrument by which human beings can enjoy the primary goods of life, namely **peace** and **security**.

3.1.2 Critique of Hobbes' views

To understand the use of theories in depth you must be able to analyse each theory critically. Hobbes' views on the social contract can be analysed in terms of the following points:

- **Human nature**
 - By arguing that people are essentially selfish, Hobbes justifies the existence of an absolute sovereign monarchy. In reality people are not inevitably as selfish as put across by Hobbes. One might like to pose a question as food for thought: What will happen if the sovereign reverts to the very same state of nature of selfishness that he is supposed to keep in check? Would that not result in tyranny? I hope you can see the inherent contradictions of Hobbes' argument here.
- **The need for an absolute sovereign**
 - The state as advocated by Hobbes needs to have absolute power to control people's egoistic behaviour. This is in direct contrast to democracy as we know it. As the saying goes: "power corrupts, and absolute power corrupts absolutely". This basically brings out the likely danger associated with too much power concentrated in one person or a few. There will therefore be no means of checking the limits of power. To an extent Hobbes advocates tyrannical rule.
- **Centralised authority**
 - By centralising authority, Hobbes argues, the sovereign is able to maintain control over the people. In practice this does not happen because, as we all know, authority in the state is divided among different institutions, for example the legislature, executive and judiciary. However one needs to be fair to Hobbes by taking into account the times in which he wrote his work (note the dates of his life). Nevertheless, all the subsequent works which led to government as we know it developed from his ideas.

These are but a few of the points that can be used to evaluate the validity of Hobbes' views. The work of John Locke, which will be considered next, has a direct link to Hobbes' work.

3.2 John Locke (1623–1704)

Locke, like Hobbes, bases his theory on the hypothetical state of nature where there is no political society. The difference between the two is that Locke uses the state of nature in an optimistic manner. According to him the state of nature:

has a law to govern it which obliges everyone; and reason which is that law that teaches all mankind who will but consult it that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions (Bowie & Simon 1977:65).

He argues that the state of nature is a state of perfect freedom in which natural law prevails (Medina 1990:30). In this case all people are equal in possessing natural rights to life, liberty and property, even before the establishment of a government. Locke delimits certain rights which may not be violated by fellow human beings. There is a sphere in each person's life which may not be violated, and in which each person exercises a degree of independence and liberty. Locke is an advocate of negative rights in that the rights accorded by nature place an obligation on other people not to interfere with them (Bowie & Simon 1977:65). Further, it is said that through the fruits of their labour human beings will acquire private property. This thesis is the cornerstone of capitalist ideology. However, property should not be acquired at the expense of others. As a result there is more or less equal distribution of resources and property. Locke advocates the contractual agreement by which a state is formed not as a way of removing or avoiding the state of nature, but rather as a way of promoting the good of the state of nature. By creating the state, human beings are avoiding the opposite and undesirable **state of war**.

3.2.1 The government as referee

In Locke's view the government plays the role of regulating rather than controlling human behaviour in a state of nature:

- There is an impartial judiciary to enforce the laws of nature. This prevents a state of war by removing the need for people to judge their own cases.
- The government should protect individual property rights against violation by fellow human beings.
- The government protects the individual rights to life, liberty and property within a framework of public law governing all people equally (Simon & Bowie 1977:64–67).

The Lockean government is a referee rather than a welfare state. The principles of the existence of government are the protection of the three natural rights: life, **liberty** and **property**.

The whole concept of the limited powers of the government in Locke is summarised by Ebenstein and Ebenstein (1991:432) as follows:

... first, the law must apply equally to all, rich and poor, favourite at court and countryman at plough; second, the law must not be arbitrary and oppressive, but must be designed for the good of the people; third, the legislature must not transfer its lawmaking power to anybody else [and the need for] the Rule of Law.

ACTIVITY 4.1

Read the above two theories of Hobbes and Locke, and answer the following questions:

1. List all the similarities in the two theories.

2. List all the differences

3. Which of the two can be sufficient to explain the nature of the government as you know it?

You will have realised that the two theories, though they deal with the same concepts, tend to give these concepts different if not opposite meanings. While the natural state of humankind according to Hobbes is all doom, misery and survival of the fittest, Locke on the other hand is an optimist. He believes that people are good and will do everything that is right and unselfish in a state of nature. It is only in the rare instance of a state of war that people pose a threat to each other. The state is therefore only necessary to guide people. To Hobbes, the most extreme type of state is needed to control the state of nature.

3.3 Jean Jacques Rousseau (1712–1778)

The work of Rousseau begins from the premise of analysing human nature, like Hobbes and Locke. His state of nature depicts human beings as being primitive. In a state of nature, there is a complete absence of all social relations (Medina 1990:45). Rousseau uses the state of nature in a hypothetical manner in an attempt to explain the development of human nature. He maintains that human beings began as being good, pure and civilised, but with time evolved from this state of nature to being corrupt. He blames the evolution of society as the cause for the corruptness of human nature. By interacting in society people began to realise that they are both physically and mentally unequal (Medina 1990:46). The source of problems which make a state necessary according to Rousseau is the inequality among people. He distinguishes between two types of inequality. The first type is **natural inequality**, which consists of differences in age, health, physical and mental strength. On the other hand there is also **political inequality**, which exists in terms of wealth, power and honour (Ebenstein & Ebenstein 1991:498). Social individuals are therefore unhappy.

The state of nature in Rousseau's version is a positive one. Whereas Hobbes has a negative view of the state of nature, Locke and Rousseau treat the natural state of human beings as being generally good and free from evil.

3.3.1 The nature and purpose of government

According to Rousseau the existence of people in a society which is naturally corrupt makes it necessary for government to be established. Social individuals are unhappy and alienated according to Rousseau. Medina (1990:49) gives the following reasons for this contention by Rousseau:

- that they are alienated from their original state of nature, of peace
- they are alienated from their natural freedom or independence
- they are alienated from economic self-sufficiency
- they have more inequalities than just the natural ones

It is because of this unhappiness and inequality that humans become irrational and bad. This makes the formation of government necessary. The government in Rousseau's social contract exercises ultimate authority over people. Through the social contract, humans replace their **natural liberties** with civil liberty which is made possible by surrendering their natural freedom to the sovereign. This surrender, which he calls "**The General Will**", entails total submission by the individual to the will of the whole community, which is sovereign (Ebenstein & Ebenstein 1991:498.) Rousseau's sovereign is all the people of the community who are party to the social contract. This sovereignty is therefore total, inalienable and indivisible. The people cannot give it away or give it up (Ebenstein 1991:499).

The government for Rousseau is a temporary instrument working on behalf of the people as a whole. The government in this case is therefore the people themselves. It is from this that the idea of **direct democracy** was conceived:

"Government for the people by the people."

3.4 Immanuel Kant (1724–1804)

Kant is regarded as the last major thinker in the social contract tradition (Ebenstein & Ebenstein 1991:532). His work is a collection of articles from which his ideas are derived. His contribution is valuable for your deeper and wider understanding of the origin and nature of the state.

Like the preceding three scholars, Kant also begins from the premise of the state of nature. His view of the state of nature is that it pre-existed political society. In the state of nature there is no law and there is no order. To a large extent this view is the same as Hobbes' view. Justice is absent and there is anarchy and disorder. Human existence in a state of nature is always under a **threat of war**. This means that unlike Hobbes who believes that the war actually exists in a state of nature, Kant says that it is only an implied but ever present threat.

Freedom is an important element of Kant's work. He regards freedom as being either positive or negative. It will not serve our purpose in this guide to go into detail in this regard. However, Kant argues that freedom is ever threatened in a state of nature. Freedom is based on morality, which is a matter of living under a specific set of common laws for all the citizens and obeying such laws for the good of all (Ebenstein & Ebenstein 1991:530).

3.4.1 The need for government

Kant regards government as a union of "men" under the common banner of the law (Ebenstein & Ebenstein 1991:530). In his view government is not the sovereign

authority. What governs the conduct of human beings in a political system is **morality** rather than politics. In Kant's view, ethics precede politics. Political activities and political institutions are therefore governed by the need to do good. Whereas the first three scholars we have dealt with emphasise the final goal as being the satisfaction of individual need, Kant put emphasis on that which is good for the collective — that which is just. The **rule of law** is the supreme authority and therefore government and all the citizens are to respect it. The existence of government should be by the will of the people. The concept of the “collective will” in Kant's work is identical to that of Rousseau. However, unlike Rousseau, Kant does not advocate direct democracy. The general or united will only functions in the purpose of choosing a government. To a large extent, Kant refers to the function of the majority will in the appointment of a government. The government is therefore an instrument by which human freedom is protected and promoted. This is achieved by subscribing to a system of common law and ethics in a political society. The constitution plays a pivotal role in making sure that the citizens and government exist in harmony under the rule of law. Ebenstein and Ebenstein (1991:531) quote Kant's idea about a constitution as follows:

A constitution allowing the greatest possible human freedom in accordance with laws which ensure that the freedom of each can coexist with the freedom of all the others. This is at all events a necessary idea which must be made the basis not only of the first outline of a political constitution, but of all laws as well.

The principle embodied in the above quotation of Kant's political ideas indicates a strong belief in and respect for the rule of law in any government. There is also a strong need for mutual respect among individual citizens inter se, as well as between citizens and the government and its machinery.

4 Social contract theory in public administration

ACTIVITY 4.1

Read through the above theories on the origin of the state and answer the following questions:

1. List all the elements that the four theories have in common.

2. Which elements of the theories of Rousseau and Kant are consistent with the present-day nature of the state?

3. Which one of the four theories best describes the nature of political relations in South Africa or in any state that you are familiar with?

4. In your opinion, how do the theories apply to Public Administration?

The subject of the theory on the origin of the state is a very important part of this module. Remember, we are dealing with the foundations of public administration! This means that by studying the theory and thoughts that have emerged in the past, we are able to better understand the nature of relations as we see them today. In other words, to address the foundations of public administration we also need to learn about scholars and ideas which might have contributed to the nature of the state as we observe it. In the above theories, a number of important concepts have been covered. While most of the issues covered are highly philosophical (no single right answer), each of us can relate to one or two of the ideas embodied in each theory. I will therefore not attempt to channel your point of view in this regard, but will certainly try to bring to light some of the useful points that you need to consider:

The first point we look at is the common element to all these theories, that is the **social contract view**. This view is also central to Public Administration with specific reference to understanding the nature and basis for the relationship which exists between the different role-players in the state. It is particularly important for this module on the

reciprocal relationship that exists in the state. While there is no such thing as an ultimate, definitive and conclusive social contract, all forms of state to one extent or another do reflect the manifestation of the elements of the above theories. It is not possible to refer to an ultimate contract since, as we have seen, there are divergent and, in some cases, opposing views among the different scholars. It is therefore up to you to decide which theory best lives up to the system you are analysing. The other aspects covered in the theories are important to Public Administration for many reasons. Some of the points to consider are given below:

- **The state of nature.** This concept is covered by all the scholars dealt with above. The **optimistic view** looks at the good side of human nature. It appeals to the need to have a democracy where people are allowed to determine their destiny because of their generally good tendencies. The **pessimistic view** on the other hand assumes that humans are bad. It addresses the possibility of the coexistence of human beings in the absence of law. Reflection in this regard generally concerns the small-scale manifestation of lawlessness and the easy tendency towards war. Think of the taxi violence, rape and murder in this country, and the escalation of civil wars in many countries throughout the world. The two views are not mutually exclusive in the context of Public Administration.
- **The sovereign ruler.** This idea is found in Hobbes' work. The question in this regard is to what extent this idea has influenced the nature of government structures to be either unitary or federal (it is my assumption that you covered these concepts in the first-year course).
- **Democracy and liberty.** The issue of liberty is covered in depth by Locke who is a strong advocate for private property. To what extent has this been adopted by modern constitutions and states? By assessing the different states and their constitutions, we will be able to determine the differences based on the level of democracy and freedom allowed in the different states.
- **Rights and obligations in the state.** The extent to which the different constitutions adapt to the upholding of rights in their constitutions is also a good determinant of the nature of relations in a state. The question we could ask centres on the issue of the nature of the reciprocal relationship in a state.

The different scholars are all concerned about the limits of power of one party to the social contract vis-à-vis the other parties.

5 Review

I hope you found this study unit and theme interesting.

We learnt that the nature of the state as we know it today is not a coincidence. Over the centuries, there have been scholars who dedicated their lives to the study of the state and who tried to prescribe the means by which state affairs can best be run. The very nature of human beings makes it necessary for a state and its machinery to assume its existing form. The emergence of the social human being also led to the need to have an authority and a mechanism to facilitate a good life among human beings. The different types of states, ranging from a direct democracy (anarchy), to a despotic tyranny are all covered in one way or the other in the theories of the state. The social contract in itself is a direct manifestation of the nature of relations and interactions which exist among members of a society. The extent to which a particular state reflects a social contract differs from state to state.

Self-evaluation questions

- 1) What do you understand by the concept of a theory?
- 2) What is the other collective name for what is known as the theory of the state?
- 3) List the different theories of the state in order of occurrence, that is in chronological order (pay attention to the dates in brackets).
- 4) What is the optimistic view of the state of nature? Who are the theorists associated with it?
- 5) What is the pessimistic view of the state of nature? Who are the theorists associated with it?
- 6) List the similarities and differences between the following theorists' contributions:
 Thomas Hobbes
 Immanuel Kant
 or
 John Locke
 Jean Jacques Rousseau
- 7) Assess the applicability of the social contract theory to the South African situation or the situation of your particular country.
- 8) How do elements covered in the social contract theory manifest in public administration? Use practical examples.

THEME 3: ROLE-PLAYERS IN PUBLIC ADMINISTRATION

Overview

In theme 1 we established the basis of relationships in public administration. In theme 2 we learnt about the different theoretical ideas forming the key to understanding the origin of the state. At this point we need to take a closer look at the more practical, everyday forms assumed by the state. In the present theme the different role-players will be analysed in detail so that you can understand the intricate nature of relations in a more practical sense. In other words, we are now going to zoom in on public administration in practice. Each of the elements forming part of the Public Administration model is pivotal to the interactivity between role-players involved in the reciprocal relationship prevailing in public administration. While theme 2 dealt with the theoretical basis for explaining and understanding the origin and role of the state, this theme will consider the different role-players involved in public administration processes and how they influence or are influenced by the other role-players. Your approach to social contract theory referred to in this subject matter should be lateral in the sense that you need to reflect on its relevance to the practical issues that we are now going to deal with.

Authority is the overriding factor that determines the success of the reciprocal relationship being dealt with in this study guide. You should understand this authority in the context of the constitution and the citizens over which it is exercised. The central role-player is the state: all other components will be dealt with in the context of understanding the state. This theme is therefore going to cover the components of the state, namely constitutions, society, government and the citizens. In addition there are important role-players in public administration at the international level. The United Nations, which is notable among these, will be dealt with briefly in theme 4.

Key questions

After studying this theme you should be able to answer the following questions:

- 1) What is the nature of the state as a role-player?
- 2) Who is society and what role does it play in the state?
- 3) What is the nature of government and how does it relate to other role-players?
- 4) What are citizens and what is their importance in the relationship?
- 5) What kind of authority keeps public administration in harmony?

- 6) What other forces play a role in public administration?
- 7) What is the role of other states?

Key concepts

Important concepts that have to be dealt with in order to find answers to these questions are the following:

- state and constitution
- society
- citizens and elections
- government and needs of society
- power and authority
- constitution
- global village
- ethics

STUDY UNIT 5: THE STATE

1 Introduction

Now that you have looked at the different ideas on the origin of the state you can move on to study the state in a more practical manner. In this study unit you are going to learn about the nature of a state and how it relates to its different components. I hope you will find it interesting.

Study objectives

At the end of this study unit you should be able to:

- 8) explain the concept “state”
- 9) illustrate the key components of a state by means of a diagram
- 10) briefly describe the principles determining the nature of a state
- 11) list and briefly discuss the key role-players in a state
- 12) discuss the characteristics of a state

2 What is a state?

The concept denoted by the term “state” was first introduced by Niccolò Machiavelli in the 15th century (Ebenstein & Ebenstein 1991:384). For our purposes, we are going to look at only a select few of the numerous definitions of this concept here.

According to MacIver in Strong (1972:5), a state is an association of institutions aimed at the development and maintenance of social order. It is distinct from other institutional associations in that its members are united in obedience of a common law structure and authority. On the other hand, Botes (1995:5) identifies the state as an internationally recognised territory with a self-governing permanent population. This means that the meaning of the state is understood in terms of sovereignty and the fact of its existence. Further, the state is to be understood in terms of its primary aim: to provide a good life to its members.

ACTIVITY 5.1

Look at the above definition of the state as given by MacIver:

1. Is it sufficient in giving a clear meaning of the concept “state”?

2. What are its shortcomings?

3. Compare it with Botes’ definition.

4. Give your own definition.

As you have probably realised in carrying out the activity, the above definitions cannot stand as individual and sufficient definitions of the state. While they are both true, they are more or less confined to a particular part of the meaning conveyed by the concept of a state. Consequently it will be better to look at both definitions to get a fuller picture. MacIver’s definition tends to ignore the element of territory and its size. Such a definition could be taken to refer to any association of a random collection of institutions as a state. For example, COSATU is an association of Trade Union

institutions. Its members are also governed by rules or laws of some kind. This, however, does not make COSATU a state. On the other hand, Botes correctly defines the state in terms of territorial boundaries and a permanent population, but in its turn this definition ignores the need for obedience to authority and law.

From the two definitions it is safe for our purposes to define the state as: *An association of institutions of society, politically organised for the purpose of maintaining law and order within an internationally recognised territory.*

The basic aim of the state is therefore the maintenance and promotion of a good life for its members (Botes 1995:5).

3 Principles determining the status of a state

While there are many associations of different size and nature in society they cannot all be called states. What then makes an association a state? In order for an association to be called a state, it has to fulfil the following requirements:

3.1 Demarcated geographical area

A state is identified with an internationally recognised geographical area. The clearly marked boundaries or borders serve as a means of controlling people's movements between different countries. Citizenship of a specific country is facilitated by the use of specific boundaries. Borders therefore serve the purpose of defining and identifying a country's citizens. They exist for the following reasons:

- **political reasons**
 - A government's jurisdiction can only cover a limited and specific area. The borders are created for the purpose of solving territorial disputes among governments.
- **administrative reasons**
 - Coordination and control are necessary ingredients for the success of any activity. If a single government is to offer services to an unlimited territory this would make such coordination and control difficult and even impossible.
- **economic reasons**
 - In practice there are limited resources available to any government at any time. This puts a limit to the scope and extent of services and functions that it can perform. By establishing boundaries, this puts a limit to the number of people that would depend on the government of a specific country.

It is important to note that the size of a territory does not determine whether or not it can be called a state.

Think about the case of South Africa and Lesotho.

3.2 Permanent population

The permanent population of the territory as defined above makes up the citizens of that state. A citizen is therefore a member of a state with all rights and obligations pertaining to such membership.

Citizenship

The original definition of a citizen was offered by Aristotle as “he who has power to take part in the deliberative or judicial administration of any state” (Ebenstein & Ebenstein 1991:87).

According to the Collins Concise Dictionary, a citizen is “a native registered or naturalised member of a state, nation or other political community.”

From the above definitions it can be concluded for our purposes that a citizen is a permanent member of a state who has all the social, political (voting) and economic rights accorded by the authorities of that state. In addition the citizen has obligations to fulfil, like the payment of taxes.

Each government needs to have facilities for the registration of all its citizens in what are known as

- a birth registry for registering the birth of babies and issuing birth certificates
- a death registry for registering the death of citizens and issuing death certificates

A citizen of one state cannot freely move to another. For this to happen the government of his/her home country has to give permission by means of a passport. Such a system ensures that there is a record reflecting the whereabouts of all citizens.

ACTIVITY 5.2

Think about the influx of illegal immigrants into South Africa or any country and answer the following questions:

1. What is the main problem with having illegal immigrants in a country?

2. What is the impact on government and state facilities?

3. Do you think the problem can be solved?

4. Give a list of possible interventions by the government in order of importance.

I imagine you thought about a number of other socioeconomic problems associated with this very pertinent problem in South Africa and other countries, like the United Kingdom and the United States, to name just two.

3.3 Sovereignty of nations

In accordance with the nature of the state it should have an authoritative body which has power to make and enforce laws within the borders of its geographical territory by all means as it deems fit (Strong 1972:6). This kind of authority is known as **sovereignty**. There are two kinds of sovereignty: internal sovereignty denotes the supremacy of a specific person or group of persons over the rest of the members of a state. On the other hand, external sovereignty means the independence of a state in reference to other states (Strong 1972:6).

The sovereignty of a nation is reflected by the different values, cultures and symbols (eg the national flag or annual festivals like Brazil's Carnival Dance in Rio and the Cape Carnival in South Africa) which it maintains. In South Africa, statutory holidays like the 16 December (Reconciliation Day) holiday which marks the adoption of the 1996 Constitution, are also important. The political relations of a state with other states should mutually uphold respect for sovereignty. Chapter 1 of the 1996 Constitution, is important in defining the sovereignty of South Africa.

ACTIVITY 5.3

Read chapter 1 of the constitution and list all elements you see as reflecting South Africa's sovereignty:

Analyse the relationship of America with any one of the following countries:

- Cuba
- Iraq
- South Africa

1. How would you describe the relationship? Friendly, hostile, neutral?

2. Do you think each country in this case is sovereign in terms of its relationship with the other?

3. Do you suppose there could be a different situation? Explain:

Botes (1995:7) sums up on the nature of a sovereign state as a territory where all the people together can form a government which possesses the right, power and authority to determine and pursue its own destiny — politically, economically and socially.

3.4 Independent political entity

The nature of a state implies that members of a society are united in a political sense. This means that they can create a government and its related institutions under which they can enjoy an orderly social life. These members decide through a constitution on the nature and content of the government. The meaning and nature of a constitution will be dealt with in more detail later in this study guide. At this point it is enough to say that the constitution of a country delimits and defines the nature of the authority exercised by the authorities. It also defines the nature of relations between the different institutions created for the purpose of government. Some of the matters covered by a constitution are the following:

- the term of office of a government
- the voting system
- the structure of the government in terms of legislature, executive and judiciary
- the administrative institutions

All these make up the political identity and, therefore, the sovereignty of a territory that can be called a state.

The principle behind this characteristic is that no state has the right to interfere with the political activities of another state.

3.5 International recognition

The relationship between a state and the international community is very important. The fact that all states are part of the Global Village forces them to interact with each other. Such international interaction takes place in different dimensions:

- **political relations:** entail cooperation on matters of mutual interest like peace, security and welfare
- **economic relations:** in the form of international trade relations, investment and financial aid and loans
- **social relations:** these are not completely unrelated to the first two. Rather, they are an outcome sought as a primary objective of political and economic relations.

Since no country is entirely self-sufficient, countries need to maintain good relations with each other. This is reflected in the existence of organisations like the United Nations (UN), the Organisation of African Unity (OAU), and the Southern African Development Community (SADC). These organisations are a reflection of the political values and objectives at the international level.

Membership is therefore regulated and not automatic. South Africa suffered during the apartheid era because of its exclusion from the international world which meant that in principle it was deprived of the status of a state.

4 Key role-players in a state

A state is divided into two main categories of role-player, namely the **government** and the **governed**. Its existence rests on the pillar of law and obedience to the law. When referring to this relationship, it is important that the student understands the basic principle involved. I will call it the principle of collective voluntarism. This is based on the assumption that originally, society had independent individuals who decided to form an authority to govern them. Individuals who refuse to submit to this authority will be regarded as deviant and punishable by the rest of society through the relevant machinery.

4.1 The government

This is the institution or set of institutions bearing responsibility for ensuring that the objectives of the state are achieved. The government is to be understood in the context of its function. In order to execute government functions the government is divided into specific components, commonly referred to as branches of government.

- **Legislature**
 - This is the largely political component of the state which performs its policy making and problem solving function. It consists of many departments as we shall see later.

- **Executive**
 - The policies made by the legislature are implemented by an administrative component of government known as the executive. The professional component of government is found here.
- **Judicial**
 - This is the body of government which maintains law and order in the state. It is concerned with ensuring citizens' compliance with the law.

The government must be understood as distinct from the state and as being only a component of the state. In serving its purpose, the government makes use of different kinds of machinery which can also be coercive in nature.

In addition, the government needs to be divided up so that the provision of services can be done in the most practical manner. This entails the geographic division of a state territory into individually manageable units. These units are the regions and towns and cities which make up a country. Such divisions are also included in the constitution. The structure and functions of government will be dealt with later in this theme.

4.2 The governed

For the purposes of this section it suffices to mention the different components of the governed. In the basic sense the concept of the governed refers to society and its components, each of which will only be touched on briefly in this study unit, but will be considered in detail in later study units. It is important to note that the governed are all the more or less permanent inhabitants of a territory who are subject to its government. The governed therefore include citizens and non-citizens. The difference between them is in their relationship to the state in terms of rights and obligations. We will deal with this issue later when we examine the concept of citizenship in detail.

4.2.1 Components of the governed

These components are going to be considered in ascending order, from the smallest to the largest.

- **Family**
 - This is regarded as an involuntary association into which people are born. It is the first social group which plays a very important role in the development of culture. A family is part of a community.
- **Community**

- This is a group of people who are bound together by a common interest or area of interaction (Smelser 1995:144). Members of a community interact on a more or less daily basis. A community is part of a society.
- **Society**
 - Smelser (1995:144) defines a society as a group of people which can survive longer than an individual. This group is formed voluntarily or involuntarily.

It is clear from the above that a state is dependent on the presence of people to govern at different levels. According to the principles of the state, the existence of the governed precedes the existence of the state.

ACTIVITY 5.4

Analyse the current democratic South African government (elected in 1994) and its formation in order to demonstrate the validity of the statement that the governed exist before the state. List the phenomena in chronological order, for example South African society and the apartheid government, sanctions, et cetera:

1. First: South African Society

2. What is the impact on government and state facilities?

3. Do you think the problem can be solved?

4. Give a list of possible interventions by the government in order of importance.

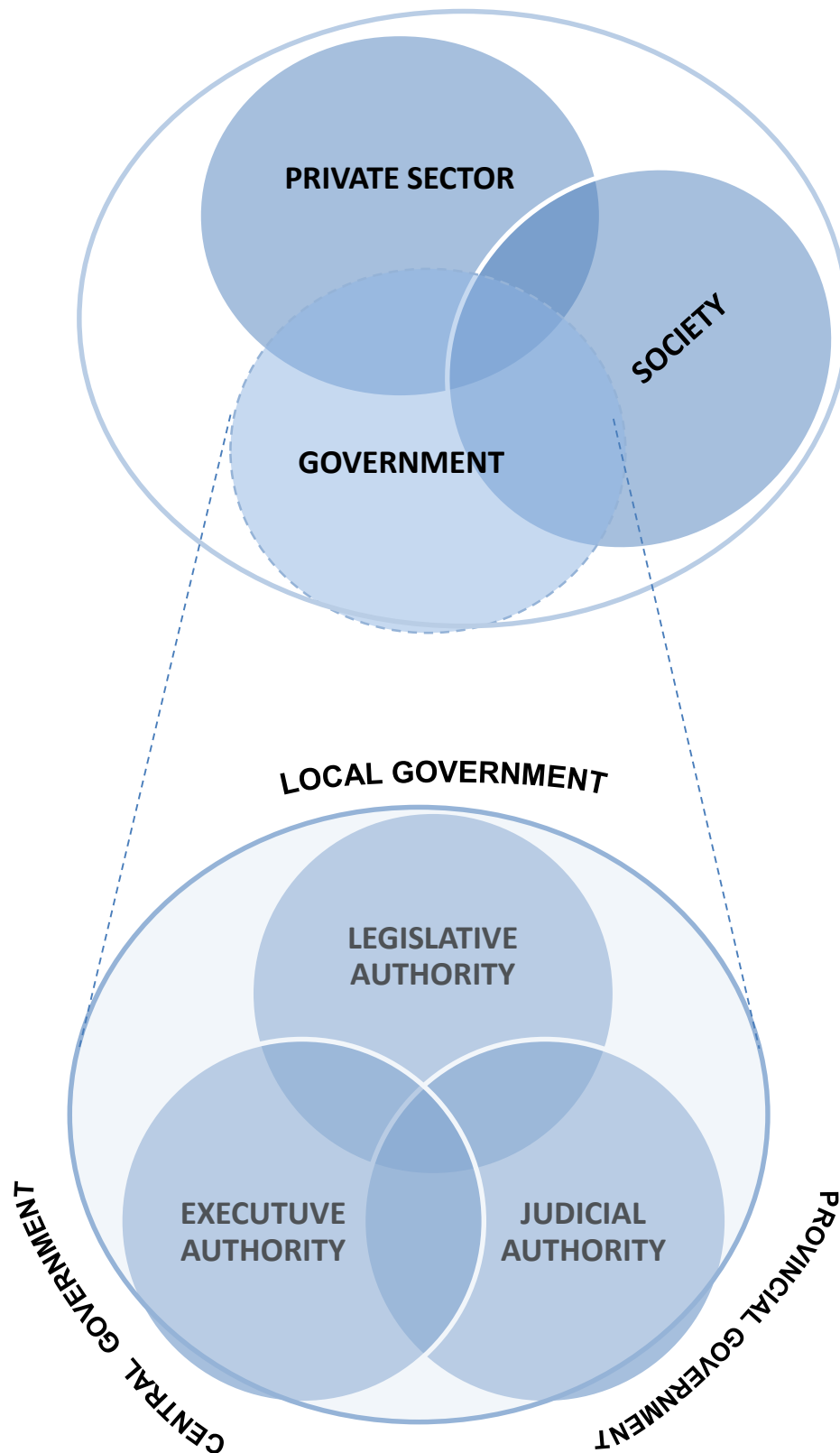
4.3 The Constitution

While it is not possible to classify the Constitution, 1996, as part of governed or government, it is still the most integral factor in government relations. In fact, the Constitution, 1996, should be understood as a referee of the game between the government and the governed.

A constitution is defined by Bryce as: “a frame of political society, organised through and by law, ...” (Strong 1972:10). It is therefore a set of principles governing relations among role players in a state. (See diagram on the next page.) The meaning of the Constitution, 1996, will become clearer in the next study unit where we study it in detail.

THE STATE AND ITS COMPONENTS

THE STATE



Produced by Dr EJ Nealer, 1998

5 Review

This study unit can be concluded by making the following deductions about the state and the citizens for the purposes of public administration.

- The citizens create and drive the processes of the state.
- The state is the umbrella of government.
- The government is the machinery of the state for reaching society's goals.
- Public administration is the process whereby government responds to society's needs.
- A state exists in a global village of other states.
- The Constitution, 1996, is the framework that defines the limits of power and relationships between the state and its citizens. It is therefore the framework for public administration.

STUDY UNIT 6: AUTHORITY AND THE CONSTITUTION

1 Introduction

The constitution is the first role-player in a state that we are going to deal with. A constitution plays an important role of defining and delimiting the authority areas of the different role-players in a state. It is for this reason that the topic of authority and the constitution has to precede all the other components of a state. In this study unit the constitution is examined in more detail. The nature of the state's authority as determined by the constitution will be covered. We will also look at the different types of constitutional systems and how they impact on the authority relations of a state. A distinction will also be made between power and authority and how the two coexist by virtue of a constitution. Finally the Constitution of the Republic of South Africa, 1996, will be analysed. Reference will be made to social contract theory in relation to the constitutional state. I therefore advise you to keep in mind the topics covered so far and at all times try to determine how the study units relate to each other. Remember how the need to do this was made clear from the beginning?

Study objectives

At the end of this study unit you should be able to:

- 1) distinguish between power and authority comparing it in table format
- 2) explain the meaning and purpose of a constitution by giving practical examples
- 3) describe the different types of constitutions
- 4) show how constitutions can be explained in terms of social contract theory

2 Power and authority in society

Power can be regarded as an essential determinant of human coexistence. It is a result of social interaction in which inequalities of intelligence, physical strength and influence become evident. On the other hand, authority may be regarded as institution-based. The central point to this section is that in any human interaction there will be power relations. In a state, as in any institution, some kind of authority is bound to be evident. We have to bear this in mind when we study the nature of power and authority relations in public administration.

2.1 What is power?

A number of definitions have been offered to define the concept of power, and these have been well condensed into one definition. According to Roberts (1971:171), power consists in the ability of an individual to influence and possibly channel the behaviour of other people in a specific desired direction. Power is not an attribute in itself. Rather it is determined in relation to other people. For example, it is meaningless in itself to say that Nthabiseng has power as an individual. If he has power, it has to be evident in his relations with fellow students or workmates. It follows that Nthabiseng can only have power over Sibongile, Jenny and Sibusiso. He could also have power over only one of them. Political leaders in a state are people who are seeking to gain power to rule over the rest of the people. The point here is that power is relative and the degree of power will differ depending on the situation. Power manifests itself in many aspects of social life, hence we are able to refer to:

- political power
- economic power
- social power
- religious power
- physical power

Power in the state is exercised by individual citizens over other citizens, or over the state. It can also manifest as the power that the state wields over its citizens. A state can also have power over other states. Usually, the possession of one type of power always translates into the possession of the other type as well. Think of the United States of America. This is of course not an absolute rule, hence the use of the qualifier “usually”. Power manifests in the form of persuasion, manipulation, influence, rewards and coercion.

2.2 What is authority?

Authority is generally associated with power, influence and leadership, but it is important to note that authority is not exactly coterminous with these concepts. According to Roberts (1971:14), authority is evident in a person’s ability to secure compliance with his/her wishes on the grounds of legitimate superiority. Authority translates into a right. Authority is regarded as legitimate power in the sense that there is machinery (legislation) by which it can be legally enforced. A person who wields authority is entitled to enforce it and demand, directly or indirectly, to be obeyed. The government exercises its authority by relying on the agency of the police, the courts

and even the army to enforce law. A court therefore obtains its authority from the Constitution 1996.

In exercising authority, governments and ruling parties tend to abuse it to the point where the need for legitimacy to justify government's actions is ignored. It is this abuse of power which results in the emergence of dictatorships.

3 Role of constitutions

Constitutions play an important role in the reciprocal relationships which exist in a state. A constitution is the legal framework that limits the power and authority of individuals. It defines how individuals relate to each other as well as government institutions relate to individuals and vice versa.

3.1 What is a constitution?

Before we explain the role of the constitution it is important to revisit this concept, this time in more detail than was done in the previous study unit.

3.1.1 Definitions

- Roberts (1971:48) defines a constitution as “A fundamental statement of laws governing the citizen's political rights, the political institutions, their functions and their relationships, within a particular political community”.
- Bryce in Strong (1972:10) defines a constitution as “a frame of political life in society, organised through and by law, that is to say one in which law has established permanent institutions with recognised functions and definite rights”.
- De Smith (1979:18) sums up precisely by saying that “Constitutions are about political authority and power — the location, conferment, distribution, exercise and limitation of authority and power among the organs of a State. They are concerned with matters of procedure as well as substance.”

In the context of this study guide, a constitution is a product of a society. It is the manifestation or blueprint for a relationship between citizens of, and the various institutions within, a state. In a constitutional state, a constitution is the highest legal standard by which a political society survives. It essentially creates, defines and delimits relations and interactions among individuals and institutions. It is important to note that not all of the state's rules will be contained in a constitution. Some other legislation is also used within the framework of the constitution. In a nutshell, a constitution is also a framework for other government legislation (Shively 1995:158).

3.2 Nature and purpose of constitutions

A constitution can be referred to in terms of its changeability, that is, in terms of how easily its provisions can be changed. Accordingly we refer to flexible or rigid constitutions. Another distinguishing characteristic typically referred to with respect to flexibility is whether a constitution is written or not. It is on the basis of these two criteria that we are going to analyse the nature of a constitution.

3.2.1 Whether rigid or flexible

In the case of a flexible constitution no special legal conditions are required to amend it. By contrast, if special conditions are required to make any changes to a constitution, then that particular constitution can be referred to as rigid. The requirement for a two-thirds majority for any amendments to the constitution is a sign of a rigid constitution. In some cases a rigid constitution will require that a special body be created solely to implement amendments, which is also usually a lengthy process in such cases.

ACTIVITY 6.1

Read chapter 4, section 74 of the Constitution, 1996, and respond to the following:

The Constitution, 1996, is:

(a) flexible, because

(b) rigid, because

No doubt you answered that our constitution is rigid in keeping with the rigid nature of a democratic constitution. This means that it is not easy for the government to change the South African Constitution at any time. Such changes require a two-thirds majority and will therefore include the input of the opposition parties. It is interesting to note

that this is the reason why the other political parties did not want the ANC to get a two-thirds majority in the 1999 elections.

3.2.2 Whether written or unwritten

A **written constitution** comprises a document or a collection of documents compiled at a particular time (Gildenhuys, Fox & Wissink 1991:27). The Constitution, 1996, is a written constitution. According to Strong (1972) written constitutions enable the population at large to be informed of the status of rules which govern them so that they know the limits and extent of their rights and obligations. To an extent, this limits the exercise of arbitrary authority which could lead to the abuse of such authority.

An **unwritten constitution** on the other hand consists of customs and traditions which form the basis for relations in a state. According to Strong (1972:58) the reference to unwritten constitutions is false, because there is no constitution which is entirely unwritten. The British constitution is the most prominent example of an unwritten constitution. An unwritten constitution is generally considered to be more flexible than a written constitution though this is not an absolute rule.

3.2.3 A declaration of national principles

It is through the constitution that the population of a country is able to express itself as a united nation. I suppose you are aware of the process which the people of this country went through in the making of the last two constitutions. Inputs from the people contributed substantially towards the final form of the 1996 Constitution. It is assumed on these grounds that a constitution will reflect a nation's qualities, values and aspirations. The preamble of a constitution reflects a sense of unity and patriotism which is necessary for a constitution to work. The preamble to the Constitution, 1996 begins with: "We the people of South Africa, ..." Please refer to the document collection or the Constitution, 1996, for the rest of the wording.

3.2.4 Delimitation of power and authority

The extent to which a constitution can effectively set limits to power and authority in a state depends largely on whether a government system is democratic or authoritarian (this matter will be covered in a another study unit). In principle, a constitution is supposed to provide checks and balances to limit the exercise of power by government and its machinery. By spelling out the rights of individuals and those of the government, the constitution empowers all the role-players with the means needed to protect themselves and to meet their obligations. Consequently the meaning of provisions in a constitution must be spelled out in precise formulation that leaves no room for doubt. The Bill of Rights is an important provision in the Constitution, 1996.

A democratic constitution also allows for the existence of other mechanisms to deter the abuse of power and authority by role-players.

ACTIVITY 6.2

Read through chapter 9 of the Constitution, 1996, and do the following:

1. List six (6) institutions which are provided to promote democracy.

2. Briefly state how this deters abuse of power and authority.

Besides the institutions listed in the Constitution, 1996, which I presume you found without difficulty, there are other, less formal institutions which are recognised in the Constitution, 1996. These include the opposition parties, the need for free and fair periodic elections, labour unions and other interest groups.

Essentially the nature and effectiveness of a constitution depends on the political variables prevailing in a country. A dictatorship will have a more flexible constitution which will of course be amended arbitrarily to suit the leader. In such a system, all the principles of a constitution mentioned above will either be severely limited or totally absent. In a democracy the need to protect the rights of individuals leads to the need for a supreme constitution.

3.3 Constitution of the Republic of South Africa

As indicated earlier, you are expected to obtain a copy of the Constitution of the Republic of South Africa, 1996. We are not going to deal with the Constitution, 1996, in its entirety, but you are advised to keep your copy available for future reference. I also advise you to get into the habit of reading it in your spare time in preparation for the practice of reading statutes as a public official. In this section we are therefore not

going to concern ourselves with the detail of the Constitution, 1996, as such, but rather with its background and how it was created. It is this detail from which we will be able to determine the extent to which the Constitution, 1996, is a reflection of a social contract.

3.3.1 Background and origin

The origin of the 1996 Constitution should be traced back to the days of the apartheid government. However for purposes of this section we are going to confine ourselves to the time when apartheid was being replaced by a democratic order.

The end of apartheid

This was heralded in the 1980s by the unbanning of trade unions and the repealing of discriminatory legislation such as that authorising job preservation and separate public facilities (Van der Walt & Helmbold 1995:30–31). These measures were the result of growing international pressure in the form of universal sanctions imposed on South Africa. At the same time there was escalating violence and turmoil in the form of protests mounted by the disadvantaged communities. I will not go into detail on this history but it is necessary to mention it at this point.

The road to democracy

February 2, 1990 marked the beginning of an era in South Africa with the address to Parliament by the then State President FW de Klerk. In this speech he announced the following:

- the unbanning of major political parties
- the release of political prisoners
- the suspension of the death penalty
- the government's intention to release Nelson Mandela unconditionally

Subsequently, rapid changes took place on the political front, including the return of political exiles and the lifting of the state of emergency (Van der Walt & Helmbold 1995:30).

Convention for a Democratic South Africa (CODESA)

This took place in two phases known as CODESA I and CODESA II. It began in 1991. The delegates represented 19 political groups, including the governments of the

former TBVC self-governing states (Du Plessis & Corder 1994:5), all the unbanned political parties, and the South African government. The PAC and AZAPO chose to stay out of these talks. Despite its collapse, CODESA was important in that it marked the beginning of preliminary negotiations leading to the democratic elections. This is reflected in the CODESA declaration of intent adapted by Du Plessis and Corder (1994:5). When you read CODESA's declaration (see quotation below) you need to keep your mind on how the principles embodied in it are reflected in the 1996 Constitution. The principles were expressed by formulating the objectives quoted in Du Plessis and Corder (1994:5) as follows:

... to set in motion the process of drawing up and establishing a constitution that will ensure inter alia:

- a) that South Africa will be a united, democratic, non-racial and non-sexist state in which sovereign authority is exercised over its whole territory;
- b) that the constitution will be the supreme law and that it will be guarded over by an independent, non-racial and impartial judiciary;
- c) that there will be a multi-party democracy with the right to form and join political parties and with regular elections on the basis of universal adult suffrage on a common voters roll ...;
- d) that there shall be separation of powers between the legislature, executive and judiciary with appropriate checks and balances;
- e) that the diversity of languages, cultures and religions of the people of South Africa shall be acknowledged;
- f) that all will enjoy universally accepted human rights, freedoms and civil liberties including freedom of religion, speech and assembly protected by an entrenched and justiciable Bill of Rights and a legal system that guarantees equality before the law.

CODESA II resulted in a deadlock and the subsequent collapse of the talks.

ACTIVITY 6.3

Read the above principles of CODESA again.

Browse through the Constitution, 1996, and answer the following:

1. To what extent is the Constitution consistent with the CODESA declaration of intent? List specific provisions of the Constitution, 1996, under each principle.

2. Is the social contract theory reflected in CODESA? Give reasons.

3. Can you identify an element of the state of nature in South Africa in the above passage?

Multi-Party Negotiation Process (MPNP)

The multi-party talks were preceded by an agreement between the National Party government and the African National Congress (ANC) to break the deadlock of CODESA. The multi-party negotiations began in March 1993 with the PAC, the Afrikaner Volksunie and traditional leaders joining the forum (Du Plessis & Corder 1994:7). In total there were now 26 participating political groups, reflecting a larger and wider representation. Decisions of the negotiation process were taken on the basis of consensus. A total of eight committees were established to deal with

different aspects of the negotiation, ranging from elections to constitutional matters. In June 1993 a final programme towards achieving a new and final constitution was tabled. The programme proposed the following:

- that the MPNP draft an interim constitution to be adopted by Parliament. This constitution was a framework for the structure of the new government after the April 1994 elections (an abundance of literature is available in the library on this interim constitution — see the list of references at the end of this study guide)
- that the then Parliament create legislation to facilitate the holding of a free and fair election in April 1994
- that the new Government of National Unity (GNU) see to the drafting of the final constitution
- that the new GNU be bound by a Bill of Rights contained in the interim constitution and enforced by an independent judiciary
- that the GNU create the regional authorities as necessary

The MPNP resulted in the elections which were held on 26 to 28 April 1994. A GNU was formed. Subsequently, a Constitutional Assembly (CA) was elected and tasked with the drafting of the new and final Constitution (Napier 1996:53).

The final Constitution, 1996

The Constitutional Assembly began work in earnest in May 1994. Invitations for submissions were extended to all South African citizens. Thousands of submissions were made by people on different issues of interest to them.

This was done through a number of means:

- postal submissions
- the creation of an internet homepage
- by telephone
- regular publication of the newsletter “Constitutional Talk”
- holding nationwide Constitutional Public Meetings (CPM)
- the substantial role played by the media in spreading the message

These efforts of the CA did not go unrewarded. This is reflected in an extract from “Constitutional Talk” that indicates the number of submissions made by September 1995.

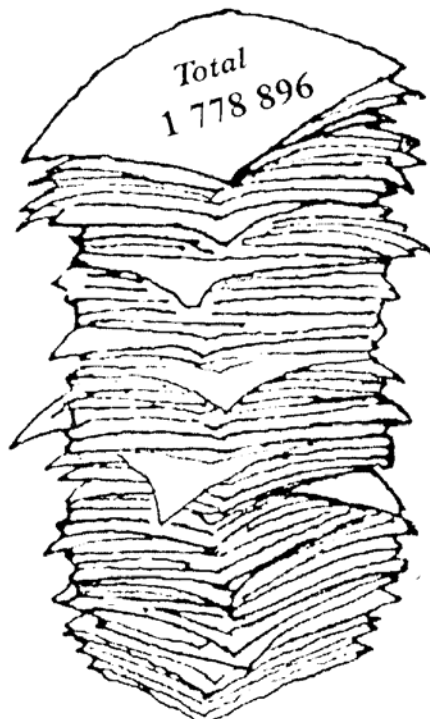
Political leaders also used their rally platforms to promote participation in the constitution-making process. The submissions guided the provisions of the

constitution. There were areas of serious disagreement. Particularly notable was the issue of traditional leaders. It is not my intention to go into detail about this process. The important point for you here is the extent to which participation as a democratic principle promoted the development of a democratic constitution for South Africa. You should also bear in mind the social contract theory and how it is applicable in this regard.

Submissions barometer

The CA has been flooded with submissions from individuals and organisations. These submissions have formed the basis of reports submitted to the Constitutional Committee. This process is reflective of the truly democratic and inclusive nature of the constitution-making process.

The total at present is 1 778 896 written submissions (this excludes oral submissions). This is an increase of 15 521 since the last issue of *Constitutional Talk*.



The final draft Constitution of the Republic of South Africa of 1996, was adopted on 8 May 1996. At this stage political parties were given the opportunity to make submissions regarding this draft Constitution (Napier 1996:54). The new Act was finally adopted as legislation on 18 December 1996.

Status of the 1996 Constitution

The 1996 Constitution is regarded as a special law with a higher status than other laws. In terms of section 2 of the 1996 Constitution, it is the supreme law of the Republic of South Africa. This is because the 1996 Constitution was adopted by the Constitutional Assembly (and not Parliament) after a unique

legislative process, and should not have been allocated an Act number (108 of 1996) as other ordinary parliamentary legislation. The Citation of Constitutional Laws Act, 2005 (Act 5 of 2005) however, restores the status of the 1996 Constitution. This implies that when reference is made to the Constitution, only the full title and year must be used, namely Constitution of the Republic of South Africa, 1996. For a detailed discussion on this matter, see the article *The 1996 Constitution of the Republic of South Africa: Ultimately supreme without a number* in the journal *Politeia*, volume 26, number 1, 2007, pages 33 to 44.

3.4 Public officials and the Constitution

ACTIVITY 6.4

Read chapters 10 and 11 of the Constitution, 1996, and respond to the following:

1. Summarise in not more than 100 words, what is expected of the public officials working in the South African public sector.

2. In your opinion, why are security services treated separately in the Constitution, 1996?

As you will have realised, the Constitution, 1996, is very explicit on the role and authority of public officials. However, this is not the ultimate guideline for use by the officials. The Public Service Commission, which is the central personnel institution for the public service, is responsible for formulating other specific provisions, such as the code of conduct for officials. In general, the Constitution gives a framework for the creation of such codes of conduct, besides which there is also a need for additional

legislation to cater for the public officials. The nature of public officials' duties and responsibilities will be dealt with in more detail in another study unit.

4 Review

Power and authority are key elements in any human social interaction. The two elements reflect inequalities of human beings in a state. Such inequalities have the potential to cause disturbance in society. A state therefore needs a constitution to regulate and direct the relations of role-players in the state. The Constitution, 1996, is the institution used by government to exercise its authority and enforce laws. Different state systems have different constitutions. A constitution provides checks and balances to the power of the role-players:

- It creates a framework for the structure and nature of government.
- It defines and delimits the power of each role-player in a state.
- It outlines the obligations of the role-players.
- It can be written or unwritten; flexible or rigid.
- It is a declaration of national values and principles, usually reflected in the preamble.
- Its nature varies from one system to another.

The current South African Constitution, 1996, is a product of a lengthy process in which all the citizens participated either directly or through representation. The result of this process was the democratic Constitution, 1996.

STUDY UNIT 7: SOCIETY

1 Introduction

Society is the second component of the state. It is important to note that in dealing with this concept we are not departing from the initial position where we said first a society organises itself politically to form a state, and then the state forms a government (remember the Public Administration model?). It is assumed, therefore, that society precedes the state and government. However, once a society has formed a state with a government, as is the case in our society, the state is viewed as the umbrella institution in which society exists. In this study unit we are going to learn that it is through society that political activities as we see them tend to take place. **All the role-players** in the state come from the same society. The nature and components of society have a great influence on the nature of relations and on the values that exist in a state. This means that even the constitution of a state is shaped by the nature of the society in which it is created. In learning more about society there are a number of issues that will guide us:

Study objectives

- 1) briefly explain the meaning of “society”
- 2) outline and identify the components of a society
- 3) explain the place and role of the private sector in a state
- 4) explain the electoral process as a means of political activity

2 What is a society?

A definition of a society is provided by Aberle et al (1950) in Smelser (1981:163):

A society is a group of human beings sharing a self-sufficient system of action which is capable of existing longer than the life span of an individual, the group being recruited, at least in part by sexual reproduction of its members.

2.1 Components of society

The meaning of the concept of “society” can best be understood by examining the lesser or constituent parts which make up a society, namely the individual, family and community.

2.1.1 Individual

It is safe to regard the individual as the smallest constituent unit or member of a society, who becomes such a member at birth. The existence of the individual at a particular geographical location is likely to change after birth owing to such factors as migration. In a state this individual can either be a citizen or an alien.

- A **citizen** is someone who has all the political and civil rights pertaining in a particular state. A citizen is also entitled to take part in all the political activities allowed by the constitution. In turn, the same citizen also carries some obligations reciprocal to those rights. The extent to which a permanent member of a state is regarded as a citizen is dependent on the type of government and its policies. The apartheid system did not recognise non- whites as citizens of South Africa. As a result some rights and privileges were withheld from them.
- An **alien** is defined by Roberts (1971:6) as an inhabitant of a country who owes allegiance to another state. Such an individual is prohibited from exercising any of the political rights which the citizens of the state in which he/she is living are entitled to. Aliens are also referred to as foreigners and, as in many other relatively better developed countries worldwide, there are plenty of these in South Africa. It is important to note that while the word is usually used derogatorily in reference to illegal aliens, there are legal aliens too. These include tourists, immigrant workers or resident immigrants, refugees and visiting business delegates.

The individual is a small but important political element in a state. Individual votes eventually add up to millions. For this reason, a state system should be more concerned about the individual as a part of a whole.

2.1.2 Family

Smelser (1981:281) defines a family as “two or more persons related by blood, marriage or adoption who often live together in the same household”.

The family setting is the first place where the individual encounters human behaviour. A family’s lifestyle is determined by:

- values

- beliefs
- culture
- language
- religion

The family is important in that it shapes the behaviour of its members by way of socialisation. This to a large extent determines the interpersonal relations and the social and political behaviour and preferences of an individual.

2.1.3 Community

A community, for example the Greek community, can be regarded as a larger type of family that extends beyond the confines of a single household. Rather it is a localised population whose members are closely interdependent on a daily basis (Smelser 1981:144). This means that in a way, a community can be regarded as a family of households. The lives of the individuals are closely intertwined in that they are concerned with what happens to each other. A community can be identified on the basis of a culture and certain attributes which are the norms of its members' lives. The extent to which a community can be identified as a unit depends on a number of factors:

- racial and cultural diversity in one geographical area
- occupational preoccupations of members
- religious divergences

For the purpose of analysing a state, communities are identified largely along lines of political and social behaviour rather than by geographic location. This means that political party membership or preference of a certain political system can be more important and influential than the community one lives in.

3 Private sector in society

I am sure you have been hearing about the “private sector” at least twice a week for some time now. Fox and Meyer (1995:101) give a lengthy explanation of this concept:

- It is that part of an economy whose activities are under the control and direction of nongovernmental economic units such as households or firms. Each economic unit owns its own resources and uses them mainly to maximise its own well-being.
- Traditionally it is that sector of the economy which conducts business for profit; specifically the business and industrial communities.

This means that the private sector ends up being of benefit to the community by default rather than by design.

Cloete (1996:4) gives a broader view of the private sector as including any other institution which is outside the scope of government, namely trade unions, religious groups, political parties, associations and ethnic groups. He also includes voluntary nongovernmental organisations (NGOs) in his definition.

ACTIVITY 7.1

Read the following case history and respond to the questions following it:

The community of a remote village called Tsakane in the Northern Province are experiencing a transport problem. Incidentally, Zaks Makene is a son to one of the villagers who is a prominent business man in Gauteng. He grew up in Tsakane and always feels that it is the whole community which made him what he is. One good Christmas holiday he decides to host a party for his village and for people living in the surrounding area as a gesture of appreciation and goodwill. Some of the invitees live up to 15 kilometres from the village. On the day of the party, Zaks realises that the people are tired from the effort they have made to come because they had to walk all the way for lack of public transport. Zaks's heart is touched. A month later he sends five minibuses to operate in the area as taxis. The villagers are overwhelmed at the solution of their transport problem by their very own son of Tsakane. All they needed to do was find the R5 for taxi fare

1. How would you describe Zaks?

2. What in your opinion was Zaks's motive for giving a Christmas party for the whole village?

3. What was Zaks's motive in bringing taxis to Tsakane?

4. Who will benefit from these taxis?

5. Do you think the taxi fare is fair?

Your response to this activity will undoubtedly be purely subjective. The essential object of this activity, however, was to bring to the fore the nature of the private sector. It would seem that clearly, Zaks is a kind and well-mannered man. However it is highly likely that it is because of these qualities that he has been able to attract good business in his Gauteng home. One cannot tell for sure whether he had already decided to bring taxis to his home town before the party. While the residents are happy to have transport, Zaks's fare shows that he is out to make a profit from these people. Remember that the taxi service has to operate in an area with a radius of 15 km to meet the transport needs of the people concerned.

The private sector is actively involved in social welfare activities. In South Africa, banks and insurance companies are active supporters of charities. Private business associations assist in different ways in times of disaster by making donations of food and clothing, for example. While the private sector may have the people's welfare at heart, it in fact operates solely on the basis of profit. Publicity through the media is a

form of advertising for private businesses when they get involved in charity work. Secondly, private businesses are owned by members of society who are also treated as ordinary members of the state. The private sector can be represented by either an individual or a group of individuals. They pay taxes and also need the services of the government, like roads and protection. They also have the right to vote like other citizens of a state.

4 Elections and political parties

By this time it is highly probable that you have heard of and probably taken part in an election. Elections can be described as a method of selecting persons to fill certain positions in government. People who take part in the election process are qualified to do so in that they meet the criteria prescribed for such participation. Participation in an election held by an association would obviously be limited to members of the association concerned. In a state participation is limited to citizens of that particular state who have reached a certain age and have the right and are qualified to vote. It is normal for the constitution of a country to contain provisions on qualifications to vote. Elections can either be **direct** where the vote is cast specifically for the appointment of a specific candidate to a position. On the other hand elections can also be **indirect** in that voters elect representatives who can then vote on their behalf for a specific candidate for a position.

ACTIVITY 7.2

Read chapter 5, Section 86 of the Constitution, 1996, and respond to the following:

1. How would you classify the election of members of Parliament? Give reasons.

2. How would you classify the election of the President? Explain.

4.1 Purpose of elections

It is essential in a democracy that the public take part in government affairs that concern them. It is equally important in terms of social contract philosophy that members of a society be involved in the election of individuals who will ultimately run affairs of interest to the public. Moyo (1992:7–9) outlines the following as some of the functions of elections:

1. They promote democracy.
2. They provide an opportunity for citizens to periodically elect a government.
3. They formalise the character of popular participation in government processes and affairs.
4. They compensate for inequalities of power distribution among individuals in society.
5. They are an indirect way by which citizens, through their representatives, have a say in the public policies which affect their lives and wellbeing.

Essentially elections facilitate the establishment and reinforcement of the legitimacy of the ruling government of the day. By being in power with the mandate of the people, a government is able to exercise its authority with the assurance that the people will obey and respect its legislation and policies. Elections are held in a democratic system on the basis of competition +among an indeterminate number of political parties. This also serves as a check on the manner in which a government renders services in order to be re-elected. In other words, a ruling party will try to be as efficient as possible in order to be re-elected by satisfied voters at the next election.

4.2 Political parties

Political parties are organised institutions which have an ambition to win public office and allocate resources of the state in an authoritative manner. Shively (1995:195) offers this definition:

A political party is a group of officials or would-be officials who are linked with a sizeable group of citizens into an organisation; a chief object of this organisation is to ensure that its officials attain power or are maintained in power.

While most people tend to link political parties with interest groups, the two are different. Interest groups are groups of people who come together to put forward a matter of interest to the government or to influence the policies of government. On the other hand political parties try to become the government itself and to stay in power

(Shively 1995:195). Political parties are not necessarily confined to a democracy and the number of parties will differ from one system to another.

4.2.1 Functions of political parties in a state

Political parties are the vehicle for an efficient and democratic government. Their activities are an important means of establishing and maintaining a social contract tradition in a state. There are a number of functions that political parties perform in a state:

- **Political parties and participation**

Through their campaigns and other activities political parties in the opposition serve as a mechanism for encouraging public participation in politics and government. It is through party politics that the citizens are made aware of the options available to them in terms of choices at elections. The level of political freedom and participation depends on the nature of the governments as you will see when you deal with types of government in the next section.

- **Political parties as producers of leaders**

- A political party by definition strives to gain access to power positions of government. The choice of a good party leader influences the ability of a party to get into government. Such a good leader will also thus become a national leader. Whether a leader is regarded as good or not depends on subjective judgement and political preferences of the person making the judgement.

- **Political parties as a source of political identity**

- Political parties have names, values and principles which they seek public acceptance of to gain popular support. The people who support a specific party are therefore identified with that party.

- **Political parties as a means of control**

- This means that in the interest of upholding its principles each party will require a certain kind and standard of behaviour of its followers. By this means political violence and turmoil may be curbed to some extent. However, depending on the principles of the party, the same mechanism can also result in violence. The party which advocates violence in a democracy will only have mass support in the short term and is therefore unlikely to remain in power.

5 Review

I hope you found this study unit interesting. At this stage you should be able to describe the meaning and nature of a society in terms of its components. Society is a self-sufficient group of people capable of outliving an individual person's lifespan. It has three levels of components, namely the individual, the family and the community. The private sector is that part of society which has become organised for purposes of profit or gain. The activities of the private sector are regulated by rights and obligations in a state like those of any individual citizen.

Elections and political party activities are an important element in society in that they facilitate public participation in government matters. They therefore promote the tradition of a social contract in a democratic state. The nature of a government influences the level of public participation as you shall now learn in the next study unit.

STUDY UNIT 8: GOVERNMENT

1 Introduction

In this study unit we are going to deal with the third component of a state, namely government. This is an important section in that it brings out a distinction which is not normally evident in routine interaction between the government and the state. While dealing with this section you need to keep in mind the fact that it is the government which affects your life as a public official. This means that the identity of a public official lies under that of government

Study objectives

At the end of this study unit you should be able to:

- 1) explain the meaning of the concept “government”
- 2) discuss the relationship between a government and a state
- 3) outline and discuss the different institutions of a government
- 4) explain the nature of authority institutions of government
- 5) discuss the nature of geographic institutions of government
- 6) illustrate the nature of government by means of a diagram

2 What is government?

The term “government” has a relatively fixed meaning, which has two dimensions in that it refers to both the institution and the process. Roberts (1971:89) describes the process of government as involving the making and implementation of public policies in public institutions. It is the authoritative allocation of resources for the welfare of the public. The process of government is identified as the functions of government which you are dealing with in section B of this module, namely the legislative, executive and judicial functions (Fox & Meyer 1995:55). The institutions of government, on the other hand, are the different organisations which are responsible for carrying out the functions of government.

The form of a government depends on the relationship between itself and its citizens. The basis of government’s authority and legitimacy is public. However it is important

to note that some governments have no legitimacy in this sense. These matters are dealt with in the next section.

2.1 Forms of government

A government can take many forms. The form a government takes depends on its relationship with the citizens of the state. The key element to the existence of a government is authority.

2.1.1 Monarchy

A monarchy is a system of government in which one person, usually a king or queen, rules the country. The authority of this type of government is derived by heredity where the position is passed down generations of the same family line. This system of government has evolved over time to become a combination of the traditional authority and the political side. An example of a monarchy is the British system.

2.1.2 Aristocracy

An aristocracy is also known as an oligarchy. According to Fox and Meyer (1995:88), power and authority are exclusively held by a small group of influential people in a state. Such a government tends to be arbitrary because the constitution is determined exclusively by the highest or ruling class of society.

2.1.3 Dictatorship

Essentially, there is little difference between the first two forms of government outlined above and a dictatorship. The only difference is that in a dictatorship absolute power is exercised without consultation. A dictator does not seek legitimacy and is usually not legitimate in the eyes of the people he/she rules.

2.1.4 Democracy

The most popular lay definition of a democracy is the one which says “democracy is government by the people for the people”. You will recall that when we dealt with social contract theory Rousseau was advocating a direct democracy, which is only one variant of democracy. Democracy is defined by Roberts (1991:61) as a form of government in which the people participate directly in policy making, or indirectly by means of representation. In a democratic system, elections and referenda are modes of direct public participation.

Note that in dealing with the different forms of government you cannot confine any system to any single form. This means that the distinctions are made for analytical

purposes only. In practice, any system can be found to possess a bit from each type, depending on the circumstances. A democracy can also at some point be found to be subject to the will of a minority or even to be operating as a dictatorship. This is usually the case in times of war when wide consultations would prove counterproductive for state security.

3 Institutions of government

In this section we are going to focus on the different institutions which make up a government. The institutions dealt with here are broad classifications for the individual functions and departments. When you go through this section you need to put practical institutions into perspective. When we refer to a state or a country we are referring to a vast scope of activities in which the government has to be involved. While a state may be small like Lesotho, it can also be as large as South Africa. In both cases there is one national government machinery. The government has to be divided into departments and institutions which make it possible to provide services of such a wide scope. These institutions are divided: (i) on the basis of government authority and functions; and (ii) on a geographical basis.

The relationship between the two categories can be illustrated by means of the diagram on the next page.

3.1 Authority institutions

In this section we deal with what is commonly known as the trias politica principle which was defined by Baron de Montesquieu in his work entitled *L' Esprit de Lois*. The essence of this principle was its recognition of the need to divide the functions and authority of government so that there is no concentration of power in one area or institution. This division was required as a means of protecting the rights of the individuals in a state (Roux, Brynard, Botes & Fourie 1997:268).

The authority institutions are the legislature, the executive and the judiciary.

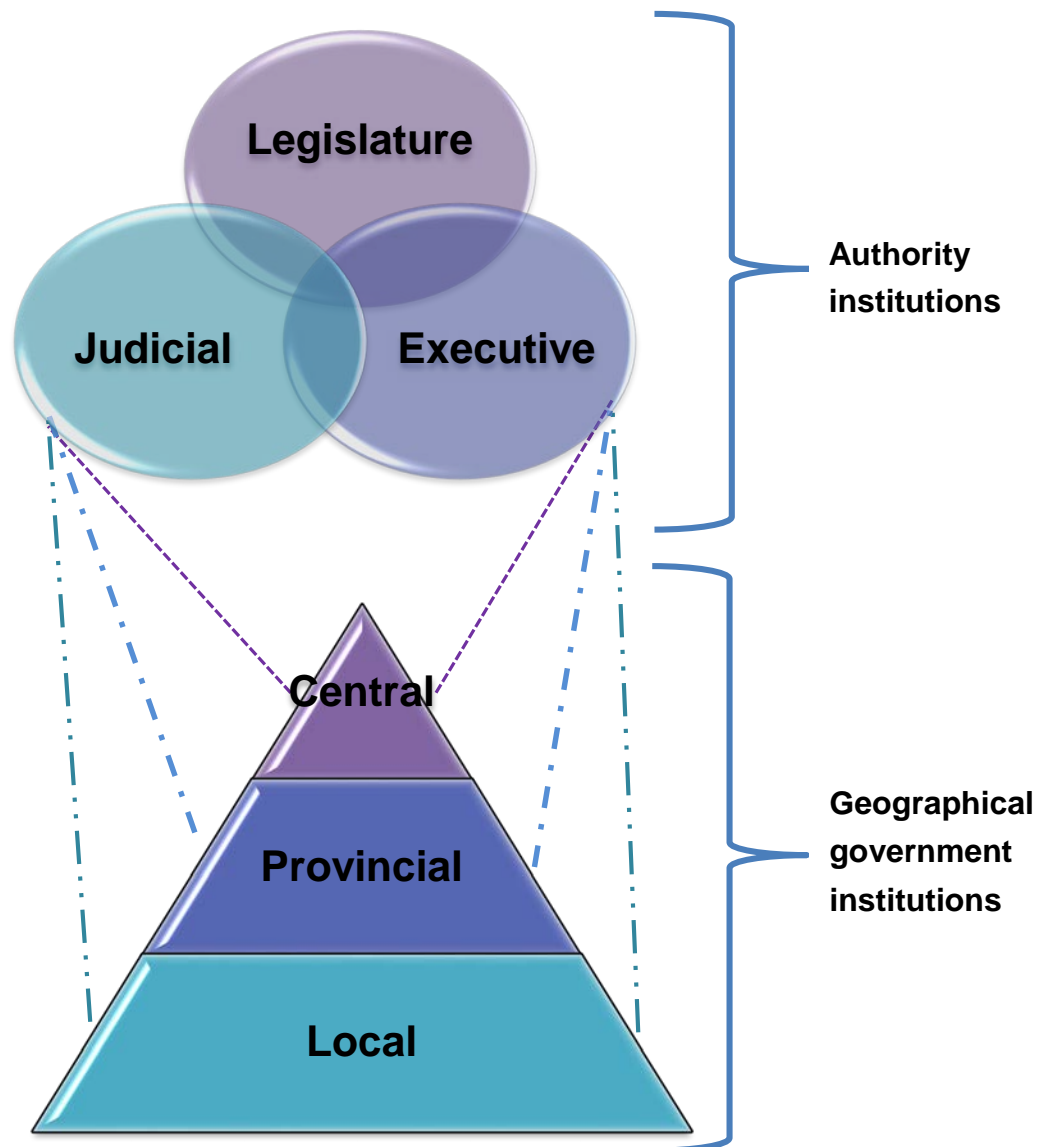
3.1.1 Legislature

Study chapter 4 of the Constitution, 1996

The legislative function of government consists in its policy making and resource allocation by means of legislation. The legislature is the political dimension of government. In a democratic system, it comprises of the ruling majority party and the minority opposition parties. The legislature is commonly referred to as Parliament, which is where voters' elected representatives exercise their mandate. Study the

relevant section of the Constitution, 1996, where the composition of Parliament is given.

Interactions between the authority and geographic institutions of government



ACTIVITY 8.1

Read chapter 4 of the Constitution, 1996 and respond to the following:

1. How many tiers make up the Parliament of South Africa?

2. Name the tiers and whom they represent.

I suppose you did learn that the South African Parliament is made up of the National Assembly for the central government and the National Council of Provinces (NCP), obviously representing the provincial legislatures. The legislature is subordinate to the framework of the Constitution, 1996. This principle is known as the **Supremacy of the Constitution** (see par 3.3.1: Status of the 1996 Constitution). Legislative authority is distributed among the national, provincial and local levels or tiers of government which you will encounter in the next section. The seats of the different levels of government are situated at the relevant geographic locations, that is at local, provincial and national centres.

3.1.2 Executive

The executive functions of government are those concerned with implementing the policies of the legislature. These functions are distributed among all the institutions of government where services are rendered or activities are visible. Public officials are part of the executive authority.

ACTIVITY 8.2

Read chapter 5 of the Constitution, 1996 and respond to the following:

1. Who is the head of the executive?

2. List the other institutions which make up the executive.

As you have learnt from the Constitution, 1996, the national executive comprises the following:

- The President and Deputy President
- Cabinet ministers and deputy ministers
- Administrative institutions and departments (ministries)
- Public officials in all state departments

It is in these administrative institutions that all public officials are involved. Examples of these are the different state departments, which include the Ministries of:

- Education
- Health
- Environmental Affairs
- Land and Agriculture
- Finance
- State Security, et cetera

Like the legislative institutions, executive institutions are also found at the three levels of government located at national, provincial and local centres.

3.1.3 Judiciary

The judicial authority is vested in all the institutions which are responsible for the enforcement of the laws of a state. Its primary function is to monitor the powers of the legislature and the executive and ensure that these powers are kept within acceptable

limits. The judiciary upholds the supremacy of the Constitution, 1996, through law enforcement. Judicial institutions are the courts of law:

- Constitutional Court
- Supreme Court of Appeal
- High Courts
- Magistrate's courts and other courts

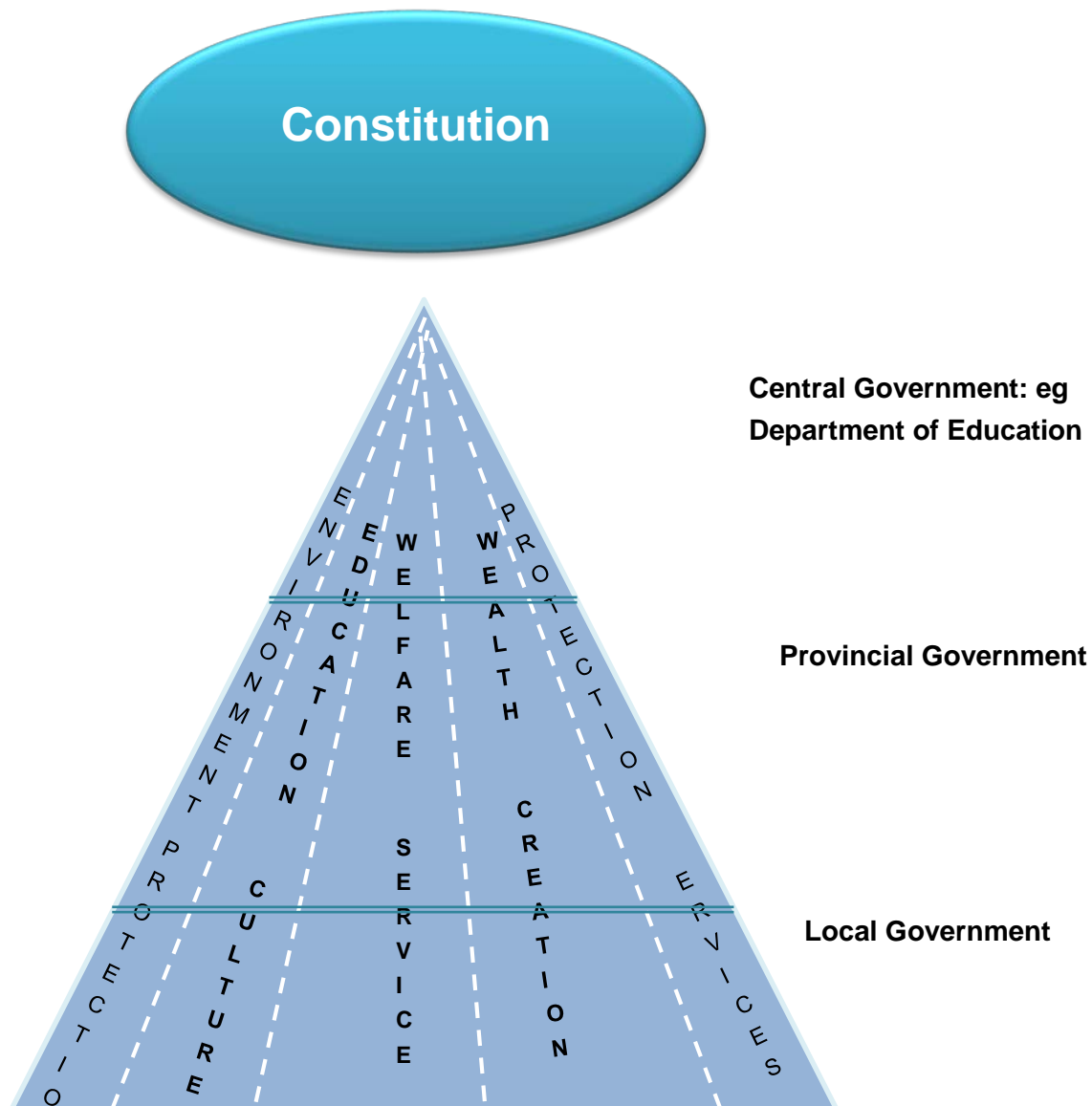
The powers of the judiciary are also distributed throughout the three tiers of government located at the relevant centres.

There are other executive institutions like the Public Protector and the Commission for Conciliation, Mediation and Arbitration (CCMA) which are also part of the judicial authority.

3.2 Geographic division spheres

The size of the territory falling under a specific state may be too large to be managed under the unified authority of the central government. This makes it necessary to divide the territory into units which are manageable. At the same time, the authority of the central government has to be delegated to smaller and lower territorial authorities. The smaller geographic divisions of government are known as the provinces or regions and the local authorities. This is illustrated diagrammatically as follows:

Hierarchy of spheres of government



Produced by Dr EJ Nealer 1998

The diagram illustrates the nature of the hierarchy of spheres of government. The lines running down the pyramid indicate that the different services rendered by government, namely **protection services, welfare and health, creation of wealth, environmental affairs** and **education** are rendered at all levels. These general government functions are covered in detail in other modules. The relationship between the central government and lower authorities depends on the nature of the government. In this case we refer to whether a state is **unitary** or **federal**. These two concepts will be dealt with in detail in your third year. At this stage you need only know the difference between them.

Unitary state

A unitary state is defined by Fox and Meyer (1995:132) as:

a state within which all authority is concentrated in the central government, and where the other tiers of government exercise only such authority as the central government allocates to them. Although authority may be delegated, final decision making remains with the central government.

Federal state

A federal state system on the other hand is where the constitution divides the authority among the tiers of government. To an extent the individual states in a federation are autonomous (Fox & Meyer 1995:49). Examples of this system are the United States of America, Nigeria, India and Canada.

ACTIVITY 8.3

Read chapters 3, 6 and 7 of the Constitution, 1996 and respond to the following question

1. How would you characterise the South African system? Give reasons.

The South African system is a hybrid of the two types of states. The Constitution, 1996, allocates authority to all three tiers. In addition the central government exercises power over the lower tiers. The provincial government in turn has authority over the local government.

3.2.1 National sphere

The national sphere of government encompasses all the institutions outlined above as part of the state as a whole. This means that the authority of the national institutions is the umbrella authority by which a state is identified internationally. For example, in South Africa it is the national government that has links with other states. The central government institutions include the following:

- The President
- National Assembly and NCP
- the national government departments
- ministers
- national courts

The national government is the highest level of the three tiers.

3.2.2 Provincial sphere

Study chapter 10 of the Constitution, 1996.

This is the second tier or level, which is immediately subordinate to the central level.

ACTIVITY 8.4

Read chapter 6 of the Constitution, 1996 and respond to the following:

1. List the provinces of South Africa. If you are not in South Africa, identify the provinces in your country and list them.

2. Explain the relationship between the provinces you have identified and the national government.

3. What do you think is the role of provinces?

I think this was an easy exercise. Provinces fall directly under the central government. They serve the purpose of bridging the distance between the latter and the local authorities. Provincial authorities consist of the following:

- premiers
- provincial legislatures
- Executive Councils and MECs
- administrative departments

3.2.3 Local sphere

Study chapter 7 of the Constitution, 1996.

Local or municipal authorities have a limited degree of independence from the higher tiers of government.

4 Review

This brings us to the end of study unit 8 in which you learnt that government is one of the components of a state. It is the machinery by which a state is able to realise its objectives. Governments may display elements of monarchic, oligarchic and democratic forms of government in different combinations. The functions of government need to be divided into authority institutions and geographical institutions. I hope you now have a better picture of the nature of relations in a state. We now proceed to the last theme and study unit of this study guide — go for it!

Self-evaluation questions

- 1) What do you understand by the concept of a theory?
- 2) List and briefly discuss the elements of a state.
- 3) What is the role of boundaries in a state? Give examples.
- 4) Give a definition of a citizen. In your view, can states limit the number of citizens that they have? How? Is it constitutional to do so?
- 5) What is the role of the constitution as a practical element of the state?
- 6) What is a government?
- 7) List the institutions which make up a government.
- 8) Discuss the relationship between the central, provincial and local governments in South Africa according to the Constitution, 1996.

THEME 4: SOCIAL CONTRACTS IN PRACTICE

Overview

In the whole study guide for this section of the module, we dealt with the different dynamics which are found in a state. It should be clear to you by now that all the institutions of the state exist for and on behalf of society, with the result that there is a continuous interaction in a more or less permanent relationship between the state and the citizens. This relationship, you have learnt, is a reciprocal one which requires that the different role-players recognise and uphold the same rights and obligations with respect to each other. When you studied the social contract theory of the state you also learnt that the basis of this theory is the reciprocation among the role-players in the social contract. With this in mind the present theme will be devoted to examining the nature of social contracts in practice. In other words we are now going to apply the theory of rights and obligations developed in previous themes. You should therefore see the ideas in this section on rights and obligations in the context of reality by identifying with specific institutions that you are familiar with. Each of the institutions outlined in this theme are treated with reference to the document collection. This means that we present no detailed discussions in order to prevent duplication since most of these institutions are dealt with in more detail in other modules of this programme.

STUDY UNIT 9: PRACTICAL IMPLICATIONS OF SOCIAL CONTRACTS

1 Introduction

This is the last study unit of this study guide. I hope you can still see the picture or, better still, I hope you can see it much better. At this stage we are going to crystallise the nature of reciprocal rights and obligations in a state. We are going to look at different institutions ranging from the United Nations to the more localised one like the National Economic Development and Labour Council (NEDLAC) to see the manifestation of social contracts in our lives

Study objectives

At the end of this study unit you should be able to:

- 1) explain the concept termed “global village”
- 2) briefly discuss the nature and purpose of the UN Agenda 21
- 3) briefly discuss the nature and purpose of the OAU
- 4) briefly explain the relationship between South Africa and the SADC
- 5) discuss the nature and purpose of NEDLAC

2 Concept of the global village

“When America sneezes the world catches a cold.”

Every day people talk about the global village. This is a reflection of their awareness of the ever narrowing gap among states of the world. It is now as easy to communicate with a person in another country as it was to communicate with people in one's home town ten years ago. Information is now readily available through the use of different media like the television, the radio, telephones and more significantly, the computer (internet). The changes in the world have an impact on all dimensions of a state:

2.1 Social globalisation

Because of this easy information interchange, ordinary people are now more mobile and more informed. I am sure you see this every day in the way television has strongly influenced young people's values and ideals. Because of the dominant influence of American films throughout the world, the American lifestyle as reflected in movies has

become the norm for most emerging generations across all races and cultures. Consequently globalisation has influenced the following:

- physical mobility
- culture
- general knowledge
- needs and expectations to which governments have to respond

2.2 Economic globalisation

From an economic perspective globalisation is less recent. I suppose you are aware of the international trade carried on among nations in different goods and services because no economy can be entirely self-sufficient. However, the development of technology has made the process of global trade more efficient. Through the use of the internet and other real-time communication, countries are now able to trade goods as if they were doing so face to face. The development of real-time markets is now making international shopping more accessible to the point where individuals can do it from the comfort of their homes simply by operating the keyboard of a desktop computer. International trade has made the monetary currencies of different countries more interdependent. The impact of a major currency like the Japanese Yen on the South African Rand is felt more than that of the Italian Lira, for example. This means that what happens in the stronger economies has a direct impact on the economies of the rest of the world. Countries therefore are forced to be wary of economic trends of other countries. The Johannesburg Stock Exchange is strongly influenced by the New York and the Tokyo Stock Exchanges.

2.3 Political globalisation

This narrowing of the distance in terms of communication between states of the world has great implications for national governments. The changing focus of citizens makes it necessary for the respective governments to respond to and borrow ideas from other countries. Both the social and economic dimensions of globalisation have a strong influence on what a government should and should not do.

In a social context, the increased mobility results in an influx of immigrants into relatively stronger economies. An individual government has to develop policies that can enable it to cope with such problems. On the other hand, political instabilities in other countries will require that a government increases its internal security. In some cases, government may have to intervene directly and send an army to fight in another country. Essentially the issue of globalisation has resulted in a change of focus of governments, from a national perspective to a global one.

2.4 Impact on the public official

The global village has strong implications for the individual public official. During daily duties, each official needs to be aware of the extent to which such duties can impact on other states. An official also needs to know how the events in other countries affect the working environment. The influence of the global village has manifested in different forms of treaties and cooperations among governments of states on different matters.

3 The United Nations: Agenda 21

This is a global initiative which was endorsed by about 200 heads of states in 1992. The Rio **Earth Summit** was held from 3 to 14 June 1992, in Rio de Janeiro, by the United Nations Conference on Environmental Development (UNCED). The adoption of Agenda 21 was a recognition by world leaders of the need to eradicate poverty through multi-faceted development and conservation efforts. It was recognised that the world's problems of poverty, poor health, and living standards and hunger are being precipitated by the accelerating environmental degradation. Agenda 21 consists of 27 principles covering a number of important issues in the world.

4 The OAU

The Organisation of African Unity (OAU) was formed on 25 May 1963 in Addis Ababa, Ethiopia. At the time of its formation, most of the African states were under colonial rule. It therefore had 32 independent states as members at the time of its formation. The main objective of the OAU at that time was to increase solidarity among African states and to fight for the decolonisation of the other countries. The membership is automatic for all independent African states. On 9 July 2002 there were 53 members but the OAU was disbanded and replaced by the African Union (AU).

4.1 The contract

The Charter of the OAU is the agreement among the member states to promote African solidarity and cooperation (Naldi 1989:5). The Charter also reflects a staunchly held belief in the importance of sovereignty. The key elements expressed in the preamble of this Charter are as follows:

- the need to promote greater cooperation among African states
- the need to promote peace and security on the continent

- the need to respect and promote the inalienable rights of the individual to:
 - self-determination
 - freedom
 - equality
 - dignity

4.1.1 Aims of the OAU

The OAU emphasises the value of unity and cooperation. Article, 2 par 1 of the Charter (Naldi 1989:6) outlines the following aims:

- a. To promote the unity and solidarity of African states
- b. To coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa
- c. To defend their sovereignty, territorial integrity and independence
- d. To eradicate all forms of colonialism from Africa
- e. To promote international cooperation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights

ACTIVITY 9.1

Read the section again and reflect on the following:

1. Do you think the OAU is a social contract?

2. Which specific areas reflect that it is a social contract?

3. Do you think that all countries are respecting the aims and principles of the Charter? If not, why do you say so?

-
-
4. Do you think this contract is similar to the one between a state and its citizens? Give reasons?

5. Is South Africa a member of the OAU?

The fact that the signatories to the contract are independent states makes it difficult to enforce. This means that the contract largely depends on the willingness of the member states to honour agreements. The OAU has been criticised in this regard. It is labelled as essentially useless but this problem is common to all international organisations and even more intractable in the case of the United Nations.

5 Southern African Development Community (SADC)

This was originally created as the South African Development Coordination Conference. It was formed as a way of thwarting implementation of PW Botha's proposal to launch his Constellation for Southern African States (CONSAS). The central purpose of the SADCC was economic cooperation among members (Soderbaum 1996:48). The objectives of the SADCC were modified in the Windhoek Declaration which resulted in its replacement by the SADC.

5.1 Objectives

The SADC's objectives include the following:

- economic integration and cooperation
- equity and mutual benefit
- freer trade in the region
- common economic, political and social values
- promotion of enterprise competitiveness
- promotion of democracy and the rule of law
- protection of human rights
- strengthening of regional peace and security

Clearly the overriding aim of the SADC is to promote the wellbeing of individual citizens of member states.

6 NEDLAC

This is the more subnational type of a social contract. The National Economic Development and Labour Council (NEDLAC) was launched on 18 February 1996. It is a statutory body which was formed by means of legislation adopted by the government of South Africa.

From the stakeholders of NEDLAC it is indeed a social contract.

7 Review

This brings us to the end of this study guide on rights and obligations in the context of public administration. I hope you enjoyed the journey we travelled together ... I did! I certainly hope that by now you are ready to face the examination and maybe teach us a few things in the form of examples from your area. This last study unit served to illustrate to you that the practical manifestation of the concept of the social contract is evident at any level of reciprocal interaction. Increasingly, with the shrinkage of world distances, social contracts will be seen to be manifest among individuals in different states. I need to caution you, however, that there is no single ideal social contract. While I emphasised to you the fact that it is an analytical tool, each and every state will display elements of the concept in different ways.

Self-evaluation questions

- 1) Explain what you understand by the concept of a “global village”.
- 2) To what extent is your individual life affected by globalisation? Give examples.
- 3) Briefly discuss what you understand by “Agenda 21”.
- 4) What are the objectives of the OAU?
- 5) How and why was the SADC formed?
- 6) What is the place of South Africa in the SADC?
- 7) Explain your understanding of the social contract concept in terms of any of the above organisations.
- 8) Analyse your own living and/or working environment. Can you identify the manifestation of a social contract? Describe its origin, nature and objectives.

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