

CHAPTER 1

What is an SRC Constitution?

The constitution is a special law or set of laws with a higher status than other laws. The purpose of a constitution, as a key element of a legal system and as a reflection of the will of the people, is to regulate all actions. At a higher education institution, the SRC members constitute the government of the student body and the SRC constitution is a basis for the operation and management of the SRC.

The constitution can also be defined as a bundle of basic principles upon which the legal order or laws and regulations of an entity or a state are based. An SRC constitution defines the purpose of existence of the SRC as an organisation responsible for the needs of students.

The constitution serves as a point of reference and a guide for policy formulation and regulatory frameworks in any organisation. Members of the SRC have to execute their duties in accordance with the provisions of the SRC constitution.

In order for a constitution to be legitimate it has to be written and entrenched. An entrenched constitution is one that cannot be amended or repealed with procedural ease, as is the case when dealing with ordinary legislation. This prevents the government or SRC members from amending it at will. In addition to writing and entrenchment, a mechanism is required that can enforce observance of the provisions of the constitution. This function is usually assigned to the courts. At an institution of higher learning there are internal bodies with jurisdiction over internal disputes and these have to be utilised, before intervention of an outside court is sought.

The effect of the South African constitution as the supreme law of our country is that any law that conflicts with the principles contained in it, is invalid and unenforceable. Similarly, the SRC constitution is the supreme law of the Student



Body of a particular institution and no other student law may be in contradiction with its provisions.

The link between the SRC constitution and other pieces of legislation

Educational institutions, like organs of state, are bound by the constitutional principles of co-operative governance and public administration. This means that at an institutional level, the internal governance structures, in carrying out their mandate, have to take into consideration the principles of co-operative governance.

The Higher Education Act recognises the need to establish a single co-ordinated higher education system, which promotes cooperative governance and provides for a programme-based higher education. It also recognises the need for higher education institutions to enjoy freedom and autonomy in their relationship with the state. Section 35 of the Higher Education Act 1997 allows for the establishment of the SRC. The SRC has jurisdiction over student matters. The SRC being an organisation within a learning institution is therefore subordinate to the Council. This means that the SRC constitution itself has to be within the ambits of legislation governing that institution and the constitution of the country.

Key elements of co-operative governance as proposed by the Higher Education White Paper 3 are: partnership, co-operation and effective articulation of interests. The White Paper also asserts that, for co-operative governance to work, stakeholders are required to acknowledge the existence of competing and complementary interests, interdependence and a sharing of common goals for the good of the institution. Co-operative governance is also based on balancing participation with effectiveness and accountability.

Section 26 (2) of the Higher Education Act provides for the establishment of a Council, Senates, Student Representative Council and Institutional Forum amongst other offices and structures listed, in all public higher education institutions. These are institutional governance structures with distinctive roles, which may be summarised as follows:

- Council – governs the institution subject to the Higher Education Act and institutional statutes.
- Senate – accountable to Council with regard to the academic and research functions of the institution.
- Institutional Forums – advises Council on all issues affecting the institution, including those listed in the Act.



- Student Representative Council – represents students in all aspects of student life.

The following sections of the Higher Education Act provide for representation of the Student Representative Council in the above-mentioned governance structures:

- Section 27, subsection 4 (f), The Council of a public higher education institution must consist of (amongst other stakeholders), students of the public higher education institution elected by the student representative council. The council must also provide for a suitable structure to advise on the policy for student support services within a public higher education institution after consultation with the student representative council, subsection 3.
- Section 28, subsection 2 (f), The senate of a public higher education institution must consist of (amongst other stakeholders), the student representative council.
- Section 31, subsection 2 (f), The institutional forum of a public higher education institution must consist of representatives of (amongst other stakeholders), the students.

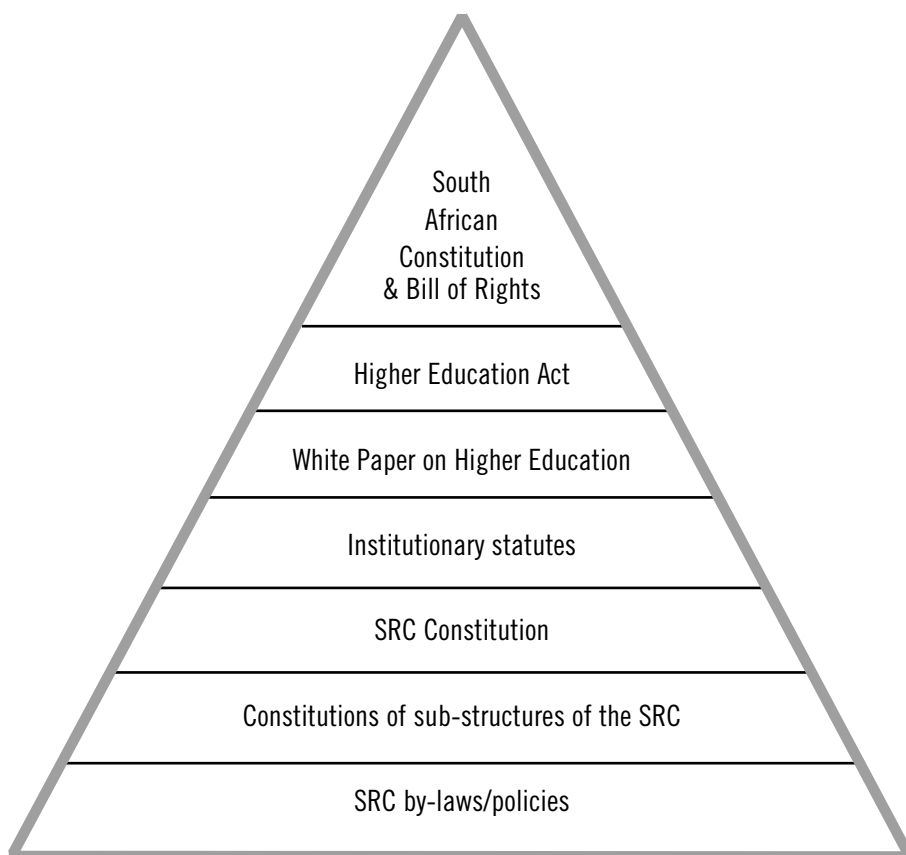
The above-mentioned provisions provide for direct representation of the student representative council in governance structures. This means that apart from representing students, Student Representative Councils have the responsibility of acting in the best interest of the institution in exercising their role in these governance structures. Section 27 subsection 7 (a) and (b) requires that members of the council must be persons with knowledge and experience relevant to the objects and governance of the public higher education institution concerned; and must participate in the deliberations of the council in the best interests of the public higher education institution concerned.

The establishment and composition, manner of election, term of office, functions and privileges of student representative councils are referred to as institutional statutes and institutional rules in terms of section 35 of the Higher Education Act. Institutional statutes are legal tools that seek to promote effective management of the Higher Education institution in respect of matters not expressly prescribed by the Higher Education Act. This includes sections on the institution's name, seat and powers, chancellor, council, senate, faculty boards, institutional forum, student representative council, convocation, management and



senior management, employees, students, donors and transitional powers. However, the minister of education has promulgated standard institutional statutes that will apply to every public higher education institution that has no institutional statute. This will apply to institutions such as newly merged or newly declared higher education institutions.

The structure depicted below illustrates the relationship between the SRC constitution and the South African Constitution and Bill of Rights, the Higher Education Act and institutional statutes and rules in terms of the hierarchy of laws. This means that provisions of the Higher Education Act are subject to and cannot contravene provisions of the South African Constitution. The same applies to the way in which the White Paper, institutional statutes and the SRC constitution are related.



What does an SRC constitution regulate?

The SRC constitution regulates the following:

- The composition of organs of student governance in an institution. This may include structures other than the SRC itself, such as the Student Parliament, the Student General Council, etc.
- The mode of election, tenure of office, powers, functions and duties of the SRC.
- The procedures for day-to-day running of the SRC such as meetings, accountability, finances and a code of conduct.
- The procedures for the amendment of the constitution or its total review.
- The dissolution of the organisation, its legal standing and the disposal of its assets.

In summary, the SRC constitution is a legal document that contains the most important rules in connection with the constitutional system of a student body.

The role of the constitution in building student governance

As a founding document of the student body, agreed to and adopted by all stakeholders, an SRC constitution is binding on those stakeholders. It is also binding on future student governing authorities. As explained, provisions of the constitution cannot be amended unless the procedure stipulated to do so is followed to the letter. In this way democracy is protected.

The SRC constitution is regarded as a written enactment of the will of the student body. If the constitution reflects the will of the student body accurately, it will ensure that any policy or law that the organisation develops will enjoy credibility from all students regardless of their political or other persuasions.

The constitution also provides for a less chaotic and non-confrontational manner of addressing disagreements with the development of policy and practice within student governance. A given policy can be challenged on the grounds that it conflicts with the constitution and should therefore be declared unconstitutional.



How can an SRC constitution be used as an instrument to transform student governance?

Historically, SRCs were classified as structures of civil society, given that they were structures around which members of the society, in this case students, were voluntarily organised. SRCs were organised as structures that were supposed to assist students in pursuing their aspirations. These included representation in bodies where they are granted representative status.

SRCs are now considered to be statutory structures as provided for in the Higher Education Act. They offer a variety of services to individual students and different student groupings. In offering these services SRCs exercise political, economic and administrative authority in order to manage the activities of student life.

In line with the definition of governance, the roles and responsibilities of SRCs can be listed as follows:

- Participate in institutional decision-making structures.
- Advise and support the delivery of effective and efficient student support services.
- Manage and administer student representation at different levels.
- Advise on the development of academic programmes and student-learning experiences.
- Participate in the development and implementation of institutional and national policies on higher education.

The extent to which the constitution can be used to transform student governance depends on clearly defining goals in this process and delineating parameters to ensure an ideally transformed student governance.

A transformed student governance system should be characterised by the following principles of good governance:

- **Shared Participation**
All students should have a voice in decision-making processes that affect them, either directly or through institutions that represent their interests. This level of participation is built on freedom of association and speech.



- **Rule of Law**
Legal frameworks should be fair and impartially enforced.
- **Responsiveness**
Student governance should serve all students.
- **Consensus orientation**
Good governance mediates differing interests to reach a broad consensus on what is in the best interests of the constituency and, where possible, on policies and procedures.
- **Effectiveness and efficiency**
Making the best use of resources in meeting the needs of all students.
- **Accountability**
Student governance structures are accountable to the public and the constituencies they serve, since public resources are utilised to maintain them.
- **Strategic vision**
Student leaders should have a broad and long-term perspective on good governance and higher education development.

In the next chapter we look into how these principles can be formulated into constitutional provisions that form the core of an SRC constitution.

