

What's in a Name?

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In his well-known play *Romeo and Juliet*, William Shakespeare wrote: 'a rose by any other name would smell as sweet.' This line questions the importance of a name and attempts to illustrate that a name is only a name. Well, with all due respect to Bill, I do not agree—a name is important.

Names are [crucial](#) to our identity. They convey deep personal, cultural, familial and historical connections and give the bearer a sense of self, their community, and their place in the world. Names can shape the destiny and future of the bearer, affect how others perceive them, can be a source of strength or comfort, have positive meaning or symbolism. Names can make the bearer stand out from the crowd or build relationships and connections. Names can be a part of the bearer's legacy and a source of [pride](#). In fact, names are so important that having one is a protected right as seen in the African Union's [African Charter on the Rights and Welfare of a Child](#), and in our own [Constitution](#).

So why then is it that 30 years after the dawning of constitutional democracy in South Africa, the instrument that made it all possible, the cornerstone of our democracy, the Constitution, is still being misnamed? As a law lecturer, I have seen too many times how the Constitution is still, to this day, referred to as "Act 108 of 1996." I have seen this so often in undergraduate and postgraduate work and in the media and even at times in peer-reviewed academic articles, that it has become a sore point. One, I hope to remedy here.

The Constitution is not a normal, everyday Act of Parliament and so, naming it in the same fashion as a common Act is unacceptable. The Constitution was not created in the same manner as other pieces of legislation. It is founded on principles that include fundamental rights, negotiated first by the Convention for a Democratic South Africa (CODESA), constituting a

number of people who probably never in their wildest dreams thought that they would have to work together, and when these negotiations stalled, by the Multi-Party Negotiating Forum (MPNF). Once the Constitution had been drafted it was not adopted by Parliament but by the Constitutional Assembly, led by Roelf Meyer of the National Party (NP) and Cyril Ramaphosa of the African National Congress (ANC) and after adoption thereof in May 1996, it was sent, not once but twice, to the Constitutional Court for [certification](#).

The certification process started on 1 July 1996 in a court in Braampark, opposite the Joburg Theatre in Braamfontein since the Constitutional Court building on Constitution Hill had not yet been built. During this process, members of the public could make submissions to the bench of legendary Justices, dressed in green robes, on whether the text before the court adhered to the 34 constitutional principles. [Other issues](#) were also brought before the court such as black economic empowerment, the right to life and the death penalty, discrimination based on sexual orientation, the termination of pregnancy, gun control, the legalisation of marijuana and pornography under the right to association which was also countered with submissions on the right not to associate. A Bill of Responsibilities to balance the Bill of Rights was even suggested.

After a long process, the first constitutional text went under consideration of the Constitutional Court in October 1996 and although the structural requirements were met, it was rejected. New hearings began on 18 November 1996 and on 4 December 1996, the amended constitutional text was certified. Only then, on 10 December 1996 in Sharpeville, a place haunted with tragedy, was it signed into law by President Nelson Mandela and did it come into effect on 4 February 1997.

The Constitution has also been, almost poetically, described in ways that no normal Act could be described: a bridge, [a monument, a memorial](#), the [birth certificate](#) of a new South Africa and the mother of the South African democracy. Normal Acts do not stimulate discussions on equality phrased as that of the [grapevine versus that of the graveyard](#). The interpretation and application of a normal Act also does, and did not inspire the construction of an [architectural](#) wonder of a court complex with dreamy design features such as treelike structures to symbolise an *indaba* or Nguni cow print judicial benches. What normal Act can be lauded worldwide as an example of the positive power of the law as a force for good in the same way as our Constitution?

If all this [history](#), philosophy and art surrounding the Constitution is not convincing of the fact that it is not just “Act 108 of 1996,” perhaps hard law will. Section 2 of the Constitution itself establishes its place as our supreme law. And if this self-determination of the Constitution is not argument enough, keep in mind that an Act was enacted to specifically and expressly name the Constitution. The [Citation of Constitutional Laws Act 5 of 2005](#) states in no uncertain terms that the Constitution has no Act number. Our Constitution is the Constitution of the Republic of South Africa, 1996.

The creation and consequences of the Constitution are epic and deserving of respect and reverence and yet, we have seen incredible disregard of the Constitution which is brought to

unavoidably sharp attention as we celebrate 30 years of constitutional democracy in South Africa in 2024.

On a micro-level this disregard, in my mind at least and to the point of this writing, is seen in the chipping away of the grandeur and status of the Constitution by not correctly citing it and each time it is referred to as “Act 108 of 1996” is akin to a bully, taunting another person with cruel nicknames.

Meso-level contempt for the Constitution and our constitutional democracy has also become more prevalent over recent years. Some have stated that the Constitution is whitewashed and Western or [alien](#). Although I do not agree with all of these points of contention, unfortunately, some of this criticism is [justified](#) as it cannot be denied that we have many problems in South Africa such as gender-based violence, extreme poverty and poor levels of [socio-economic equality](#). Indeed, our 30-year-old democracy has seen its fair share of growing pains.

At a macro-level, South Africa and our democracy have seen disregard for the Constitution and all it stands for verging on [violence](#) against us, the people. This has taken place to such an extent that our democracy has been described as a [failure](#). We have seen grave disregard for the Constitution in the outright flaunting of not only ignorance but downright breaking of the law by those in the [highest positions of power](#). When a pillar of constitutional democracy as manifested in the Rule of Law is so easily swept aside, the other pillars will surely also crumble.

The situation seems dire and dark. Yet, it is not too late and we are still able to find our way back to the light. To do so, however, we must re-embrace our Constitution and establish a newfound respect for this living document, this text which has protected and guided us, and which has codified humaneness and kindness. Although this may still be a long, uphill walk I am sure that we can take the first small step, and do so by correctly referring to our Constitution, a Constitution by South Africans and for South Africans, a democratic Constitution, the Constitution of the Republic of South Africa, 1996.

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