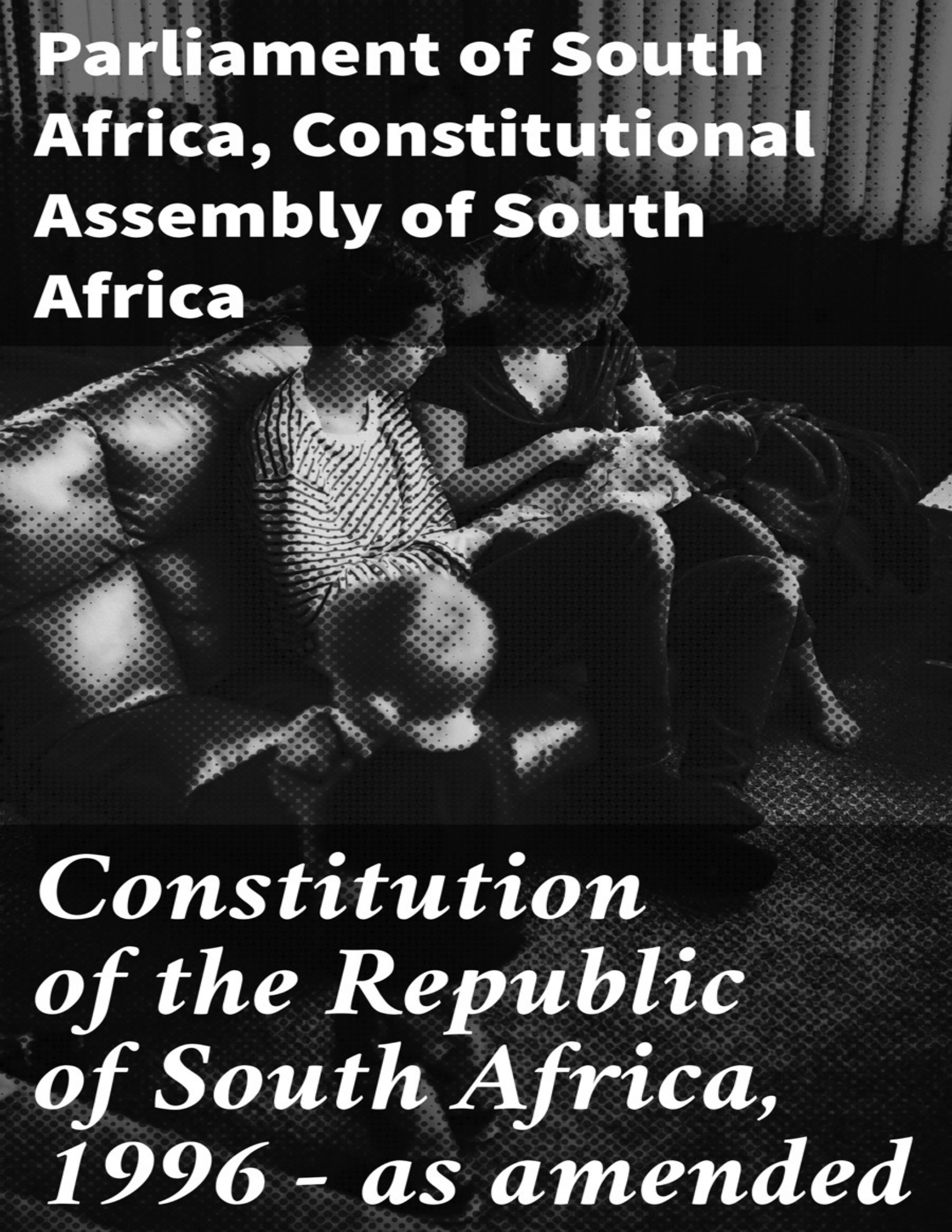




Parliament of South Africa, Constitutional Assembly of South Africa

*Constitution
of the Republic
of South Africa,
1996 - as amended*

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Assembly of South Africa**

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Chapter 1

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Chapter 1

Founding Provisions

Republic of South Africa

1. The Republic of South Africa is one, sovereign, democratic state founded on the following values:
 - (Human dignity, the achievement of equality and the advancement of human rights and freedoms.
 - a) Non-racialism and non-sexism.
 - b) (c Supremacy of the constitution and the rule of law.
 -)
 - (Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.
 - d)

Supremacy of Constitution

2. This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.

Citizenship

3. (There is a common South African citizenship.
 - 1) (All citizens are—
 - 2) (equally entitled to the rights, privileges and benefits of citizenship; and
 - a)

- (equally subject to the duties and responsibilities of citizenship.
- b) (National legislation must provide for the
- 3) acquisition, loss and restoration of citizenship.

National anthem

- 4. The national anthem of the Republic is determined by the President by proclamation.

National flag

- 5. The national flag of the Republic is black, gold, green, white, red and blue, as described and sketched in [Schedule 1](#).

Languages

- 6. (The official languages of the Republic are
 - 1) Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu.
 - (Recognising the historically diminished use and status of the indigenous languages of our people, the state must take practical and positive measures to elevate the status and advance the use of these languages.
 - 2) (The national government and provincial governments may use any particular official languages for the purposes of government, taking into account usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population as a whole or in the province concerned; but the national government and each provincial government must use at least two official languages.
 - 3) a)

- (Municipalities must take into account the
 - b) language usage and preferences of their residents.
- 4) (
 - The national government and provincial governments, by legislative and other measures, must regulate and monitor their use of official languages. Without detracting from the provisions of subsection (2), all official languages must enjoy parity of esteem and must be treated equitably.
- 5) (
 - A Pan South African Language Board established by national legislation must—
 - (promote, and create conditions for, the
 - a) development and use of—
 - (i all official languages;
 -) (ii the Khoi, Nama and San languages;
 -) and
 - (ii sign language; and
 - (promote and ensure respect for—
 - b) (i all languages commonly used by communities in South Africa, including German, Greek, Gujarati, Hindi, Portuguese, Tamil, Telegu and Urdu; and
 - (ii Arabic, Hebrew, Sanskrit and other
 -) languages used for religious purposes in South Africa.

Chapter 2

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Chapter 2

Bill of Rights

Rights

7. (This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.
 - 1)
 - (The state must respect, protect, promote and fulfil the rights in the Bill of Rights.
 - 2)
 - (The rights in the Bill of Rights are subject to the limitations contained or referred to in [section 36](#), or elsewhere in the Bill.
 - 3)

Application

8. (The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.
 - 1)
 - (A provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.
 - 2)
 - (When applying a provision of the Bill of Rights to a natural or juristic person in terms of subsection (2), a court—
 - 3)
 - (

- a) in order to give effect to a right in the Bill, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right; and
 - (may develop rules of the common law to
 - b) limit the right, provided that the limitation is in accordance with [section 36\(1\)](#).
- (A juristic person is entitled to the rights in the
- 4) Bill of Rights to the extent required by the nature of the rights and the nature of that juristic person.

Equality

- 9. (Everyone is equal before the law and has the
- 1) right to equal protection and benefit of the law.
- (Equality includes the full and equal enjoyment
- 2) of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
- (The state may not unfairly discriminate directly
- 3) or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
- (No person may unfairly discriminate directly or
- 4) indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
- (Discrimination on one or more of the grounds
- 5) listed in subsection (3) is unfair unless it is

established that the discrimination is fair.

Human dignity

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

Life

- 1 Everyone has the right to life.

Freedom and security of the person

- 1 (Everyone has the right to freedom and security of the person, which includes the right—
 - 1) (not to be deprived of freedom arbitrarily or without just cause;
 - a) (not to be detained without trial;
 - b) (to be free from all forms of violence from either public or private sources;
 - c) (not to be tortured in any way; and
 - d) (not to be treated or punished in a cruel, inhuman or degrading way.
 - e) (
 - 2) (Everyone has the right to bodily and psychological integrity, which includes the right—
 - a) (to make decisions concerning reproduction;
 - b) (to security in and control over their body; and
 - c) (not to be subjected to medical or scientific experiments without their informed consent.

Slavery, servitude and forced labour

- 1 No one may be subjected to slavery, servitude or forced labour.

Privacy

- 1 Everyone has the right to privacy, which includes the right not to have—
4. (their person or home searched;
 - a) (their property searched;
 - b) (c their possessions seized; or
 -) (the privacy of their communications infringed.

Freedom of religion, belief and opinion

- 1 (Everyone has the right to freedom of
5. 1) conscience, religion, thought, belief and opinion.
 - (Religious observances may be conducted at
 - 2) state or state-aided institutions, provided that—
 - (those observances follow rules made by
 - a) the appropriate public authorities;
 - (they are conducted on an equitable basis;
 - b) and
 - (c attendance at them is free and voluntary.
 - ((This section does not prevent legislation
 - 3) a) recognising—
 - (i marriages concluded under any
 -) tradition, or a system of religious, personal or family law; or
 - (ii systems of personal and family law
 -) under any tradition, or adhered to by persons professing a particular religion.
 - (Recognition in terms of paragraph (a)
 - b) must be consistent with this section and the other provisions of the Constitution.

Freedom of expression

- 1 (Everyone has the right to freedom of
6. 1) expression, which includes—
 - (freedom of the press and other media;

- a) (freedom to receive or impart information
 - b) or ideas;
 - (c freedom of artistic creativity; and
 -) (academic freedom and freedom of
 - d) scientific research.
- (The right in subsection (1) does not extend to—
- 2) (propaganda for war;
- a) (incitement of imminent violence; or
 - b) (c advocacy of hatred that is based on race,
 -) ethnicity, gender or religion, and that
 - constitutes incitement to cause harm.

Assembly, demonstration, picket and petition

- 1 Everyone has the right, peacefully and unarmed, to
- 7. assemble, to demonstrate, to picket and to present
- petitions.

Freedom of association

- 1 Everyone has the right to freedom of association.

Political rights

- 1 (Every citizen is free to make political choices,
- 9. 1) which includes the right—
- (to form a political party;
 - a) (to participate in the activities of, or recruit
 - b) members for, a political party; and
 - (c to campaign for a political party or cause.
- (Every citizen has the right to free, fair and
- 2) regular elections for any legislative body
- established in terms of the Constitution.
- (Every adult citizen has the right—
- 3) (to vote in elections for any legislative
- a) body established in terms of the
 - Constitution, and to do so in secret; and

- (to stand for public office and, if elected, to hold office.
- b)

Citizenship

- 2 No citizen may be deprived of citizenship.

Freedom of movement and residence

- 2 (Everyone has the right to freedom of movement.
- 1. 1) (Everyone has the right to leave the Republic.
- 2) (Every citizen has the right to enter, to remain in and to reside anywhere in, the Republic.
- 3) (Every citizen has the right to a passport.

Freedom of trade, occupation and profession

- 2 Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.
- 2.

Labour relations

- 2 (Everyone has the right to fair labour practices.
- 3. 1) (Every worker has the right—
- 2) (to form and join a trade union;
- a) (to participate in the activities and programmes of a trade union; and
- b) (to strike.
- (Every employer has the right—
- 3) (to form and join an employers' organisation; and
- a) (to participate in the activities and programmes of an employers' organisation.
- b)
- (

- 4) Every trade union and every employers' organisation has the right—
 - (to determine its own administration, programmes and activities;
 - a) (to organise; and
 - b) (c to form and join a federation.
- (Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with [section 36\(1\)](#).
- 5) (National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).
- 6)

Environment

- 2 Everyone has the right—
4. (to an environment that is not harmful to their health or well-being; and
 - a) (to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—
 - (i prevent pollution and ecological degradation;
 - (ii promote conservation; and
 - (ii secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.
 - b)

Property

- 2 (No one may be deprived of property except in
- 5. 1) terms of law of general application, and no law
may permit arbitrary deprivation of property.
- (Property may be expropriated only in terms of
- 2) law of general application—
 - (for a public purpose or in the public
 - a) interest; and
 - (subject to compensation, the amount of
 - b) which and the time and manner of
payment of which have either been
agreed to by those affected or decided or
approved by a court.
- (The amount of the compensation and the time
- 3) and manner of payment must be just and
equitable, reflecting an equitable balance
between the public interest and the interests of
those affected, having regard to all relevant
circumstances, including—
 - (the current use of the property;
 - a) (the history of the acquisition and use of
 - b) the property;
 - (c the market value of the property;
 -) (the extent of direct state investment and
 - d) subsidy in the acquisition and beneficial
capital improvement of the property; and
 - (the purpose of the expropriation.
- (For the purposes of this section—
- 4) (the public interest includes the nation's
- a) commitment to land reform, and to
reforms to bring about equitable access to
all South Africa's natural resources; and
- (property is not limited to land.
- (

- 5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
- (A person or community whose tenure of land is
- 6) legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.
- (A person or community dispossessed of
- 7) property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.
- (No provision of this section may impede the
- 8) state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of [section 36](#)(1).
- (Parliament must enact the legislation referred to
- 9) in subsection (6).

Housing

- 2 (Everyone has the right to have access to
6. 1) adequate housing.
- (The state must take reasonable legislative and
- 2) other measures, within its available resources, to achieve the progressive realisation of this right.
- (No one may be evicted from their home, or have
- 3) their home demolished, without an order of

court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

Health care, food, water and social security

- 2 (Everyone has the right to have access to—
7. 1) (health care services, including
- a) reproductive health care;
- (sufficient food and water; and
- b) (c social security, including, if they are
-) unable to support themselves and their
- dependants, appropriate social assistance.
- (The state must take reasonable legislative and
- 2) other measures, within its available resources, to achieve the progressive realisation of each of these rights.
- (No one may be refused emergency medical
- 3) treatment.

Children

- 2 (Every child has the right—
8. 1) (to a name and a nationality from birth;
- a) (to family care or parental care, or to
- b) appropriate alternative care when
- removed from the family environment;
- (c to basic nutrition, shelter, basic health
-) care services and social services;
- (to be protected from maltreatment,
- d) neglect, abuse or degradation;
- (to be protected from exploitative labour
- e) practices;
- (f not to be required or permitted to perform
-) work or provide services that—
- (i are inappropriate for a person of
-) that child's age; or

- (ii place at risk the child's well-being,
education, physical or mental health
or spiritual, moral or social
development;
 - (not to be detained except as a measure of
last resort, in which case, in addition to
the rights a child enjoys under sections 12
and 35, the child may be detained only for
the shortest appropriate period of time,
and has the right to be—
 - (i kept separately from detained
persons over the age of 18 years;
and
 - (ii treated in a manner, and kept in
conditions, that take account of the
child's age;
 - (to have a legal practitioner assigned to
the child by the state, and at state
expense, in civil proceedings affecting the
child, if substantial injustice would
otherwise result; and
 - (i not to be used directly in armed conflict,
and to be protected in times of armed
conflict.
- 2) (A child's best interests are of paramount
importance in every matter concerning the
child.
- 3) (In this section "child" means a person under the
age of 18 years.

Education

- 2 (Everyone has the right—
- 9. 1) (to a basic education, including adult basic
a) education; and
- (

- b) to further education, which the state, through reasonable measures, must make progressively available and accessible.
- 2) (Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account—
 - (equity;
 - a) (practicability; and
 - b) (c the need to redress the results of past) racially discriminatory laws and practices.
- 3) (Everyone has the right to establish and maintain, at their own expense, independent educational institutions that—
 - (do not discriminate on the basis of race;
 - a) (are registered with the state; and
 - b) (c maintain standards that are not inferior to) standards at comparable public educational institutions.
- 4) (Subsection (3) does not preclude state subsidies for independent educational institutions.

Language and culture

- 3 Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.

Cultural, religious and linguistic communities

- 3 (Persons belonging to a cultural, religious or linguistic community may not be denied the

- right, with other members of that community—
 - (to enjoy their culture, practise their religion and use their language; and
 - a) (to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.
 - b)
- (The rights in subsection (1) may not be
- 2) exercised in a manner inconsistent with any provision of the Bill of Rights.

Access to information

- 3 (Everyone has the right of access to—
- 2. 1) (any information held by the state; and
 - a) (any information that is held by another person and that is required for the exercise or protection of any rights.
 - b)
- (National legislation must be enacted to give
- 2) effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

Just administrative action

- 3 (Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
- 3. 1) (Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.
- 2) (National legislation must be enacted to give effect to these rights, and must—
- 3) (provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;
 - a)
 - (impose a duty on the state to give effect to the rights in subsections (1) and (2);
 - b)
- and

(c promote an efficient administration.

Access to courts

- 3 Everyone has the right to have any dispute that can
4. be resolved by the application of law decided in a fair
public hearing before a court or, where appropriate,
another independent and impartial tribunal or forum.

Arrested, detained and accused persons

- 3 (Everyone who is arrested for allegedly
5. 1) committing an offence has the right—
(to remain silent;
a) (to be informed promptly—
b) (i of the right to remain silent; and
) (ii of the consequences of not
) remaining silent;
(c not to be compelled to make any
) confession or admission that could be
used in evidence against that person;
(to be brought before a court as soon as
d) reasonably possible, but not later than—
(i 48 hours after the arrest; or
) (ii the end of the first court day after
) the expiry of the 48 hours, if the 48
hours expire outside ordinary court
hours or on a day which is not an
ordinary court day;
(at the first court appearance after being
e) arrested, to be charged or to be informed
of the reason for the detention to
continue, or to be released; and
(f to be released from detention if the
) interests of justice permit, subject to
reasonable conditions.

(

- 2) Everyone who is detained, including every sentenced prisoner, has the right—
 - (to be informed promptly of the reason for being detained;
 - a) (to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;
 - b) (c to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
 -) (to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
 - d) (to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and
 - e) (f to communicate with, and be visited by, that person's—
 -) (i spouse or partner;
 -) (ii next of kin;
 -) (ii chosen religious counsellor; and
 - i) (i chosen medical practitioner.
- 3) (Every accused person has a right to a fair trial, which includes the right—
 - (to be informed of the charge with sufficient detail to answer it;
 - a) (to have adequate time and facilities to prepare a defence;
 - b) (c to a public trial before an ordinary court;
 -) (to have their trial begin and conclude without unreasonable delay;

- d) (to be present when being tried;
- e) (f to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;
-) (to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
- g) (to be presumed innocent, to remain silent, and not to testify during the proceedings;
- h) (i to adduce and challenge evidence;
-) (j not to be compelled to give self-incriminating evidence;
-) (k to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;
-) (l not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;
-) (not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
- m) (to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
- n) (of appeal to, or review by, a higher court.
- (Whenever this section requires information to be given to a person, that information must be
- 4)

given in a language that the person understands.

- (Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.
- 5)

Limitation of rights

- 3 (The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—
6. 1) (the nature of the right;
- a) (the importance of the purpose of the
 - b) limitation;
 - c) the nature and extent of the limitation;
 -) (the relation between the limitation and its
 - d) purpose; and
 - (less restrictive means to achieve the
 - e) purpose.
- (Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.
- 2)

States of emergency

- 3 (A state of emergency may be declared only in terms of an Act of Parliament, and only when—
7. 1) (the life of the nation is threatened by war,
- a) invasion, general insurrection, disorder, natural disaster or other public emergency; and

- (the declaration is necessary to restore
 - b) peace and order.
- 2) (
 - A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, may be effective only—
 - (prospectively; and
 - a) (
 - b) for no more than 21 days from the date of the declaration, unless the National Assembly resolves to extend the declaration. The Assembly may extend a declaration of a state of emergency for no more than three months at a time. The first extension of the state of emergency must be by a resolution adopted with a supporting vote of a majority of the members of the Assembly. Any subsequent extension must be by a resolution adopted with a supporting vote of at least 60 per cent of the members of the Assembly. A resolution in terms of this paragraph may be adopted only following a public debate in the Assembly.
 - (Any competent court may decide on the validity of—
- 3) (
 - a declaration of a state of emergency;
 - a) (
 - b) any extension of a declaration of a state of emergency; or
 - (c any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency.
- 4) (
 - Any legislation enacted in consequence of a declaration of a state of emergency may derogate from the Bill of Rights only to the extent that—