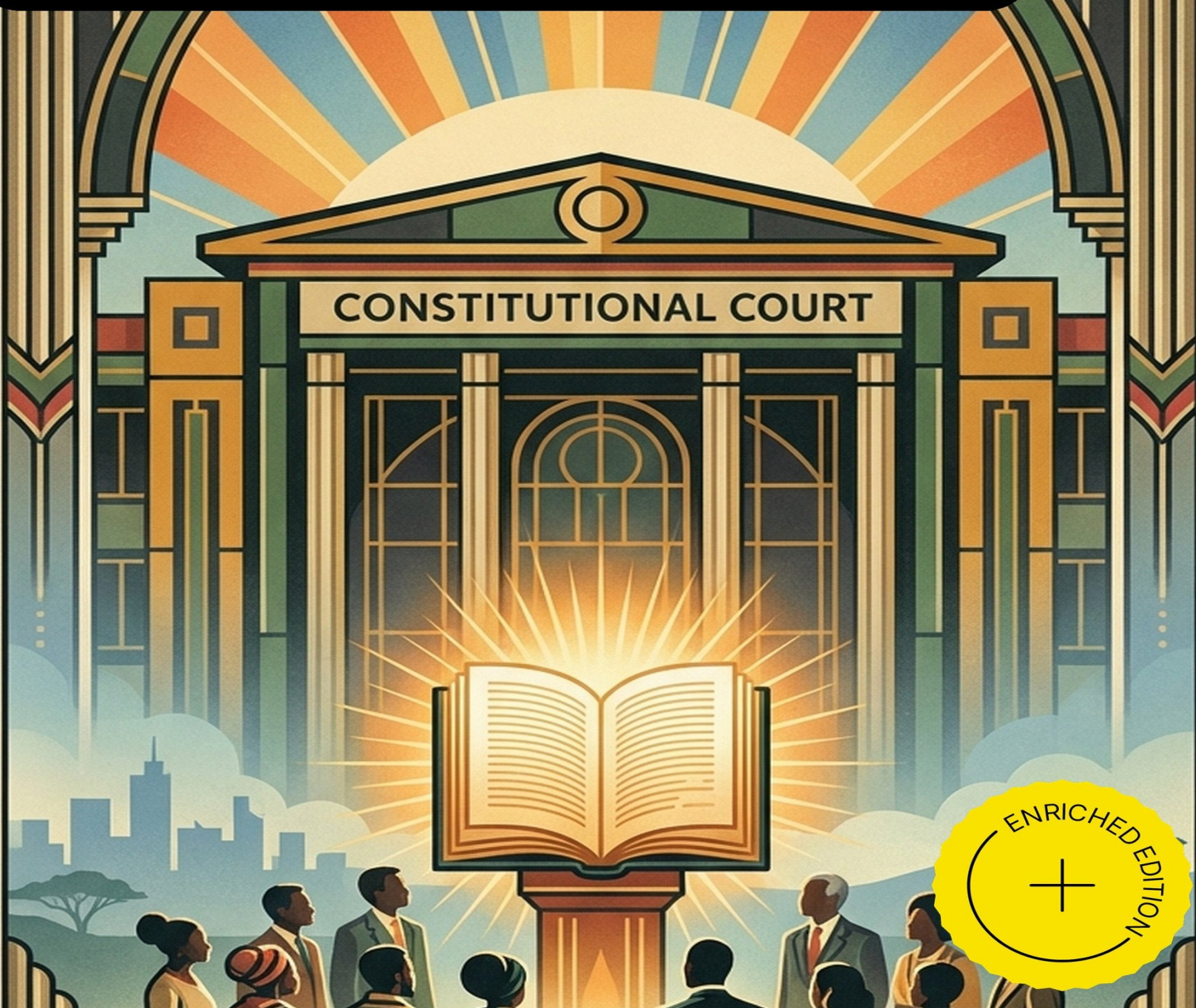
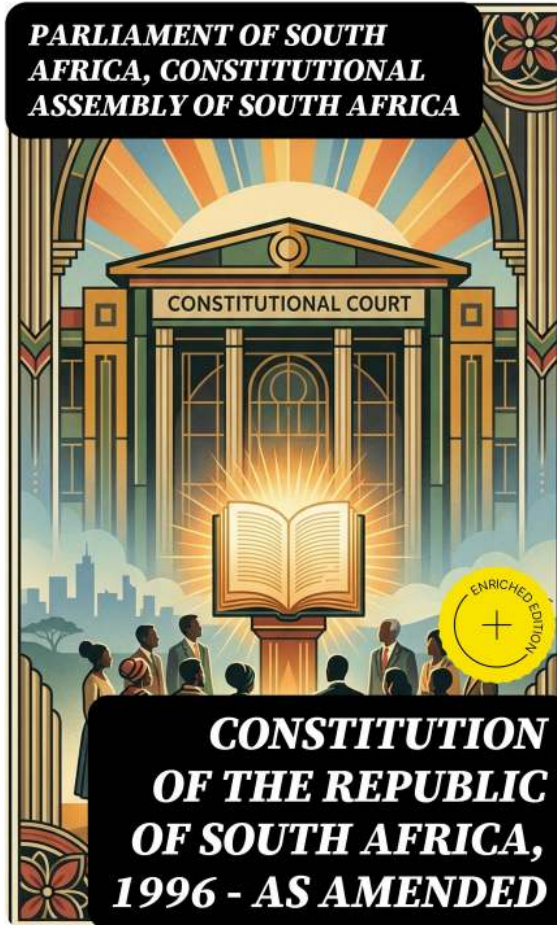


***PARLIAMENT OF SOUTH
AFRICA, CONSTITUTIONAL
ASSEMBLY OF SOUTH AFRICA***



***CONSTITUTION
OF THE REPUBLIC
OF SOUTH AFRICA,
1996 - AS AMENDED***

**PARLIAMENT OF SOUTH
AFRICA, CONSTITUTIONAL
ASSEMBLY OF SOUTH AFRICA**



**CONSTITUTION
OF THE REPUBLIC
OF SOUTH AFRICA,
1996 - AS AMENDED**

**Parliament of South Africa, Constitutional
Assembly of South Africa**

Constitution of the Republic of South Africa, 1996 — as amended

Enriched edition.

Introduction, Studies and Commentaries by Ava Marley

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Introduction

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Forged at the hinge between oppression and democracy, this Constitution turns a fractured past into a binding promise of equal freedom under law. The Constitution of the Republic of South Africa, 1996 is a foundational legal text set in the post-apartheid nation it refounds, adopted by the Constitutional Assembly and subsequently amended by Parliament. As the supreme law, it establishes the framework of democratic governance and the catalogue of rights that guide public power and civic life. Published in the mid-1990s transition, it channels hard-won consensus into precise norms intended to endure. Readers encounter a meticulously structured charter where institutional design embodies ethical commitments.

Approached as literature of law, the document offers an austere yet purposeful voice: measured, declarative, and highly organized. Sections unfold through clear definitions, carefully delimited powers, and cross-references that map how branches of state relate to each other and to the people. A brief, aspirational preamble yields to chapters on founding values, the Bill of Rights, the organs of state, and the fiscal and oversight architecture that sustains them. The tone balances restraint with resolve, making close reading rewarding for general citizens and specialists alike. The experience is less spectacle than steady orientation, guiding readers through an intricate civic blueprint.

At its core lie themes of constitutional supremacy, the rule of law, and human dignity, equality, and freedom as foundational values that animate governance. The document constructs checks and balances through separation of powers, judicial review, and enforceable standards for public administration. It institutionalizes cooperative government across national, provincial, and local spheres to manage diversity and shared tasks. A general limitations clause frames how rights may be restricted in an open and democratic society, ensuring principled balancing rather than expedience. These commitments turn abstract ideals into operational duties, defining both the limits of authority and the obligations that accompany power.

The Bill of Rights is unusually comprehensive, protecting civil and political liberties alongside socioeconomic guarantees that require reasonable, progressive realization. It recognises language, culture, religion, and customary law within the bounds of constitutional values, and permits measures that advance substantive equality for groups disadvantaged by past injustice. Access to information and just administrative action deepen accountability. Courts, culminating in a Constitutional Court, ensure the Constitution's supremacy and develop remedies to vindicate rights. In interpretation, the text encourages principled engagement with broader legal traditions, reinforcing a jurisprudence that is open to comparative insight while anchored in South Africa's own context.

What distinguishes the institutional design is its simultaneous commitment to effectiveness and openness.

Electoral rules and legislative procedures foster representation and participation; intergovernmental mechanisms coordinate shared competencies; and independent institutions support constitutional democracy by scrutinising power. Public finance provisions entrench transparency and accountability in budgeting and procurement. Security services are bound to act, and be controlled, within constitutional limits, while public administration is guided by basic values and principles. Access to courts, generous standing in rights matters, and remedial flexibility give citizens practical pathways to enforcement. The result is a system engineered for contestation that remains civically accessible.

Situated in the mid-1990s settlement that replaced apartheid with constitutional democracy, the text reflects negotiation without recounting it, preferring durable rules to episodic history. It was adopted by the Constitutional Assembly and certified by the judiciary, then brought into force and later refined through amendments enacted by Parliament. Read today, it documents a civic transformation still underway, speaking to questions of equality, land reform, social protection, and institutional trust without predetermining policy. Its blend of principled aspiration and legal practicality explains both its influence at home and its study abroad as a landmark of modern constitutional design.

For contemporary readers, the Constitution matters as a living framework that secures rights, channels disagreement into lawful procedures, and invites vigilant citizenship. Its provisions help courts, legislators, officials, and residents

navigate rapid social and technological change while remaining anchored to nonnegotiable values. Engaging with it as a book offers both civic literacy and interpretive challenge: the meaning of its clauses is continually renewed through debate, participation, and adjudication. As a result, the work functions not only as the supreme law of one country, but also as an enduring study in how law can remake a society with principled hope.

Synopsis

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Adopted in 1996 by the Constitutional Assembly, the Constitution of the Republic of South Africa establishes a supreme, rights-based democratic order after apartheid. It articulates founding values that include human dignity, the achievement of equality, the advancement of rights and freedoms, non-racialism and non-sexism, the rule of law, and accountable, responsive, open government. The Constitution binds all branches and spheres of the state and provides that any law or conduct inconsistent with it is invalid. It structures a unitary state with national, provincial, and local spheres, each with defined powers and duties and obligations to cooperate, and sets broad aims of transformation, reconciliation, and inclusive development.

At its core lies an extensive Bill of Rights that applies to all law and binds the state, and to the extent indicated, private parties. It protects equality, dignity, life, and freedoms of person, opinion, belief, association, movement, and political participation. It safeguards privacy, property subject to justifiable reform, language and culture, access to information, labor rights, and a healthy environment. Socio-economic guarantees commit the state, within available resources, to progressively realize access to housing, health care, food, water, and social security. Rights may be limited only in terms of a general limitations clause, with emergencies tightly regulated and judicially reviewable.

The Constitution promotes co-operative government, requiring good-faith collaboration and mechanisms to prevent and resolve intergovernmental disputes. Legislative authority is vested in Parliament, a bicameral body comprising the National Assembly and the National Council of Provinces. The Assembly is elected to represent the people and hold the executive to account; the Council gives provinces a voice in national law-making, especially on matters affecting provincial competencies. Law-making procedures distinguish ordinary bills from those concerning provinces, and require openness and public involvement. Members are chosen under an electoral system designed to achieve overall proportionality, and parliamentary oversight, ethical rules, and privileges support accountability and deliberation.

The national executive is headed by a President elected by the National Assembly and accountable to it. The President appoints a Cabinet, assigns functions, and leads policy implementation within constitutional limits, while Cabinet members are collectively and individually responsible to Parliament. Executive decisions and conduct are subject to legality and judicial review, and must be transparent and rational. International agreements are concluded and become binding according to constitutional procedures, with parliamentary approval required in defined circumstances. Mechanisms of executive oversight, including questions, committees, and other legislative tools, reinforce responsible government and enable scrutiny of administration and national policy.

Provinces have their own legislatures and executives led by Premiers, exercise powers in functional areas assigned in the Schedules, and may adopt provincial constitutions consistent with the national Constitution. National and provincial powers are arranged to allow concurrent competencies and to prioritize national legislation when necessary for uniformity, with safeguards for provincial integrity. Local government is a constitutionally established sphere comprising municipalities with elected councils, developmental mandates, and fiscal powers defined by law. The Constitution regulates supervision and support of municipalities and intergovernmental fiscal transfers. It recognises the institution of traditional leadership, subject to the Constitution and applicable legislation, within the broader democratic framework.

An independent judiciary administers justice impartially. The court system culminates in the Constitutional Court on constitutional matters, alongside the Supreme Court of Appeal, High Courts, and other courts established by law. Judicial independence, access to courts, and fair trial guarantees are entrenched, with the Judicial Service Commission participating in judicial appointments and governance of the bench. The Constitution establishes a single national prosecuting authority that is required to act independently and in the public interest. It also creates independent institutions supporting constitutional democracy, including the Public Protector, the Human Rights Commission, the Commission for Gender Equality, the Electoral Commission, and the Auditor-General, each with defined mandates and accountability.

Public administration is governed by values of ethical conduct, efficient use of resources, fairness, and representativity, overseen by a Public Service Commission. Security services—the defence force, police service, and intelligence structures—operate under civilian authority, are politically non-partisan, and are constitutionally regulated. Public finance provisions create the National Revenue Fund and provincial funds, require transparent budgeting, provide for equitable sharing of nationally raised revenue, and establish the Financial and Fiscal Commission and the Auditor-General for fiscal advice and audit. Constitutional amendments follow special procedures and majorities, with enhanced provincial participation where provincial interests are affected. The Constitution's enduring significance lies in its enforceable rights, accountable governance, and transformative vision.

Historical Context

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South Africa's 1996 Constitution arose from the democratic transition that followed apartheid's end, drafted in Cape Town by the Constitutional Assembly—a joint sitting of the newly elected National Assembly and Senate—between 1994 and 1996. Adopted on 8 May 1996, revised after judicial review, and re-adopted on 11 October 1996, it was signed by President Nelson Mandela at Sharpeville on 10 December 1996 and came into force on 4 February 1997. While the Constitutional Assembly authored the text, subsequent amendments have been enacted by Parliament under section 74. The document's making and amendment embody negotiated change within formal institutions, anchoring a constitutional democracy after decades of racial authoritarianism.

Its backdrop was a century of legally entrenched racial hierarchy. The 1910 Union created a state that largely excluded Black South Africans from political power, deepened after the National Party's 1948 victory and the codification of apartheid through statutes such as the Population Registration Act and Group Areas Act. Resistance—African National Congress defiance campaigns, Pan Africanist Congress mobilization, the 1960 Sharpeville massacre, 1976 Soweto uprising, and civic-labour coalitions like the UDF and COSATU—combined with international sanctions and isolation to delegitimize apartheid. These pressures created conditions for a negotiated settlement

premised on universal suffrage and constitutional supremacy, rather than continued rule by parliamentary fiat.

Breakthroughs followed President F. W. de Klerk's 1990 unbanning of the ANC, PAC, and SACP and the release of political prisoners, including Nelson Mandela. Multiparty negotiations began at CODESA (1991-1992), faltered amid violence, and resumed in the Multiparty Negotiating Process (1993). The Interim Constitution of 1993, adopted by the pre-1994 Parliament, set 34 binding Constitutional Principles and mandated an elected Constitutional Assembly to draft the final text. South Africa's first universal franchise elections on 27 April 1994 established a Government of National Unity and the institutional setting—new Parliament, independent courts, and oversight bodies—for constitution-making under stringent procedural and substantive constraints.

The Constitutional Assembly worked publicly and at pace, chaired by Cyril Ramaphosa and drawing representatives from a broad party spectrum. It undertook an extensive popular participation program, inviting roughly two million submissions, broadcasting deliberations, and engaging communities nationwide. Negotiations balanced competing visions—centralized versus federal arrangements, property rights and land reform, language and cultural recognition, traditional leadership, and the status of customary law—while being informed by comparative constitutional models and international human rights norms. The Constitutional Court's pending certification ensured fidelity to the Interim Constitution's principles, shaping choices on separation of

powers, judicial review, and the entrenchment of a justiciable Bill of Rights.

The resulting text instituted constitutional supremacy, a wide-ranging Bill of Rights, and a checks-and-balances architecture. It recognized 11 official languages and affirmed equality, dignity, and freedoms of expression, association, and religion, alongside justiciable socio-economic rights to housing, health care, food, water, and social security. It created cooperative government across national, provincial, and local spheres and replaced the Senate with the National Council of Provinces to represent provincial interests. Chapter 9 institutions—such as the Public Protector, Human Rights Commission, Auditor-General, and Electoral Commission—were entrenched to support constitutional democracy. Customary law and traditional leadership were recognized, subject to the Constitution.

Judicial certification gave the text legal legitimacy and democratic closure. In September 1996, the Constitutional Court declined to certify the first draft for failing to meet certain Constitutional Principles; the Assembly corrected deficiencies and secured final certification on 4 December 1996. The Constitution's enactment on International Human Rights Day at Sharpeville symbolically linked South Africa's new order to the memory of apartheid's victims. Early jurisprudence under the final Constitution, including landmark socio-economic rights and equality cases, demonstrated the enforceability of rights and the reach of judicial review, embedding a rights culture in public administration, legislation, and governance.

Since 1997, amendments by Parliament have adjusted institutions while preserving core commitments. Notable changes include provincial boundary reconfigurations (Twelfth, Thirteenth, and Sixteenth Amendments), the repeal of legislative floor-crossing (Fourteenth and Fifteenth), and judicial reforms expanding the Constitutional Court's jurisdiction and clarifying judicial leadership (Seventeenth). In 2023, the Eighteenth Amendment recognized South African Sign Language as an official language. A proposed amendment to section 25 on expropriation without compensation failed to secure the required majorities in 2021, underscoring stringent amendment thresholds and the negotiated balance within the property and land-reform framework.

The Constitution reflects and critiques its era by repudiating parliamentary sovereignty and racial domination, entrenching non-racialism, non-sexism, and democratic accountability, and mandating transformation through rights and institutions. It coexisted with transitional justice processes—most notably the Truth and Reconciliation Commission—linking amnesty, accountability, and human dignity within a constitutional framework. While persistent inequalities and land reform debates have tested its transformative promise, the document's durability, public participation origins, and amendability through supermajorities reveal a system designed to manage conflict through law. In this way, it embodies the negotiated, rights-based settlement that ended apartheid and continues to guide South Africa's democratic project.

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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
 - a) the advancement of human rights and freedoms.
 - (Non-racialism and non-sexism.
 - b) (c Supremacy of the constitution and the rule of
 -) law.
 - (Universal adult suffrage, a national common
 - d) voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.

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
 - a) and benefits of citizenship; and

- (equally subject to the duties and responsibilities of citizenship.
- (National legislation must provide for the 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.
 - (
 - 3) a) (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.

- (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.

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Chapter 2

Bill of Rights

Rights

7. (This Bill of Rights is a cornerstone of democracy in South Africa[19]. 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[\[2q\]](#).
- (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.
- (

- 5) Discrimination on one or more of the grounds 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) (c to be free from all forms of violence from either public or private sources;
 -) (not to be tortured in any way; and
 - d) (not to be treated or punished in a cruel, inhuman or degrading way.
 - e)
 - (Everyone has the right to bodily and psychological integrity, which includes the right—
 - 2) —
 - (to make decisions concerning reproduction;
 - a) (to security in and control over their body;
 - b) and
 - b) (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.
- 3.

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 conscience, religion, thought, belief and opinion.
5.
 - 1) (Religious observances may be conducted at state or state-aided institutions, provided that—
 - 2)
 - (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 recognising—
 - 3) a)
 - (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 (

6. 1) Everyone has the right to freedom of 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 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—

and representation. Mid-2000s amendments revised provincial and municipal boundaries to better align service delivery and community ties. A 2012 reform reconfigured the superior courts' structure and jurisdiction to strengthen coherence in the justice system. In 2023, South African Sign Language was recognized as an official language, signaling commitments to inclusion and linguistic rights. Collectively, these measures trace evolving democratic priorities.

The amendment procedure itself shapes outcomes. Supermajority thresholds rise for core provisions, with heightened protections for the Bill of Rights and provincial matters, and consent requirements where provincial interests are directly implicated. These design choices prioritize deliberation, coalition-building, and public justification over rapid alteration. Legislative rules on public participation complement the formal thresholds by embedding consultation into the process. The architecture renders constitutional change plausible but demanding, channeling political energy toward broadly acceptable refinements while discouraging abrupt departures from foundational commitments to democracy, accountability, and the rule of law.

Amendments unfold within an environment of judicial review and institutional checks, which preserves continuity across iterations of the text. Courts assess the procedural validity of amendment acts and compliance with entrenched requirements, ensuring fidelity to the constitutional rules of change. Chapter 9 institutions, civil society, and the media add scrutiny that influences drafting and implementation. The 1996 Constitution's origin in a certified, negotiated