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The interpretation, application and incorporation of international law into South Africa's domestic law by South African courts, within the framework of the South African Constitution

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Appendix

KEY SECTIONS OF THE SOUTH AFRICAN CONSTITUTION

Section 1(c)

The Republic of South Africa is one, sovereign, democratic state founded on the following values:

...

(c) Supremacy of the constitution and the rule of law.

Section 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.

Section 7(2)

The state must respect, protect, promote and fulfil the rights in the Bill of Rights.

Section 39(1)(b)

When interpreting the Bill of Rights, a court, tribunal or forum-

.....

(b) must consider international law; and

....

Section 198(c)

The following principles govern national security in the Republic:

...

(c) National security must be pursued in compliance with the law, including international law.

Section 199(5)

The security services must act, and must teach and require their members to act, in accordance with the Constitution and the law, including customary international law and international agreements binding on the Republic.

Section 231

(1) The negotiating and signing of all international agreements is the responsibility of the national executive.

(2) An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement referred to in subsection (3).

(3) An international agreement of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time.

(4) Any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.

(5) The Republic is bound by international agreements which were binding on the Republic when this Constitution took effect.

Section 232

Customary international law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.

Section 233

When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.

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