

A Preamble to a Constitution

What is a preamble?

The preamble to a constitution is an introduction to the constitution and usually bears the formal heading “Preamble”. It presents the history behind the constitution’s enactment, and sometimes sets out the nation’s core principles and values.

Do all constitutions have preambles?

Many countries’ constitutions have preambles. Some are brief, such as the preamble to the Constitution of the United States, while others are lengthy – in the cases of China and Croatia, for example, extremely lengthy with long historical (and arguably one-sided) narratives.

Is a preamble necessary?

A constitution is the basic law of a country. By their very nature, constitutions are often long and very detailed – after all, they are subject to intense legal and moral scrutiny and must stand the test of time. A preamble is the first part of the constitution that people usually read. As such, it serves to explain how the constitution came into being, as well as the nature of the system established by the constitution and the values and aspirations of the people.

What issues are covered by a preamble?

Constitutional preambles generally cover some or all of the following issues:

1. *Sovereignty*: most preambles specify the source of sovereignty in the country, that is the legal foundation on which all laws, including the constitution, are based. Some preambles state that sovereign power rests with the people (“We, the people of ...”); others refer to representative bodies such as Parliament or a constituent assembly.
2. *Historical Narratives*: preambles often tell a national story that is rooted in language, heritage and important events. The South African preamble, for example, declares that the people of South Africa “recognise the injustices of our past” and “honour those who suffered for justice and freedom in our land.” The danger of such narratives, as will be mentioned below, is that they may be socially divisive rather than unifying and they may quickly become out of date.
3. *Supreme Goals*: preambles often outline the nation’s fundamental goals. These may be universal objectives, such as the advancement of justice, fraternity, and human rights; or political or economic goals, equitable distribution of the nation’s resources; or others, such as maintaining the unity of the State.
4. *National Identity*: preambles usually contain statements about national beliefs — how citizens of the country see themselves — as well as the nation’s aspirations for the future. Preambles may include a commitment to resolve disputes by peaceful means and to abide by the principles of the United Nations Charter; they often refer to inalienable rights such as liberty, dignity and national self-determination.

5. *God or Religion*: a preamble may include references to God. This is acceptable only where the vast majority of the country's population believe in a single God, otherwise the preamble will become socially divisive. Conversely, a preamble may emphasise the separation of state and religion, or the state's secular character.

The Functions of a Preamble

Constitutional preambles have three main functions:

- *Educational*: the preamble is the part of a constitution which is most frequently mentioned in educational and public arenas. Unlike the constitution itself, which is usually a very long document with complex provisions, the preamble is relatively short and is usually written in more accessible language.
- *Explanatory*: A preamble serves to specify the reasons for the constitution's enactment and, sometimes, the basic principles expressed in it.
- *Nation-building*: A preamble can serve to express or consolidate national identity and unity.

The Legal Effect of a Preamble

The legal effect of a preamble varies according to its type:

The ceremonial-symbolic preamble: this is persuasive and symbolic and, generally, has no legal force. The preamble to the US Constitution is an example; another is the preamble to the Canadian Charter of Rights and Freedoms, which states simply: "Whereas Canada is founded upon the principles that recognize the supremacy of God and the rule of law". The preamble to the so-called "Kariba Draft" constitution is yet another example.

The interpretative preamble: this embodies a guiding framework for interpreting a constitution, usually by setting out values and principles that are inherent in the constitution. When it is possible to interpret a constitutional provision in several different ways, the courts will prefer the interpretation consonant with the preamble. Often however, constitutions – such as the South African constitution – contain a statement of principles in the body of the constitution which serves this purpose.

The substantive preamble: this type of preamble can serve as an independent source for rights that are not mentioned in the body of the constitution. A prime example is the French Constitution, the preamble to which offered independence to France's overseas territories in accordance with the ideals of liberty, equality and fraternity.

Unifying or divisive?

Just as preambles can foster national integration by forging a common identity, they can also drive people apart and contribute to social tension. This can occur if the preamble reflects the views of only one group or contains questionable historical assertions.

Accordingly, the language used in a preamble should be both inspiring (if it is a ceremonial-symbolic preamble) and non-contentious. It should stress what binds the people together and not be divisive. If it contains a historical narrative it should be inclusive.

Examples of Recent Constitution Preambles

Kenya (2010)

“We, the people of Kenya —

ACKNOWLEDGING the supremacy of the Almighty God of all creation:

HONOURING those who heroically struggled to bring freedom and justice to our land:

PROUD of our ethnic, cultural and religious diversity, and determined to live in peace and unity as one indivisible sovereign nation:

RESPECTFUL of the environment, which is our heritage, and determined to sustain it for the benefit of future generations:

COMMITTED to nurturing and protecting the well-being of the individual, the family, communities and the nation:

RECOGNISING the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law:

EXERCISING our sovereign and inalienable right to determine the form of governance of our country and having participated fully in the making of this Constitution:

ADOPT, ENACT and give this Constitution to ourselves and to our future generations.”

South Africa (1996)

“We, the people of South Africa,

Recognise the injustices of our past;

Honour those who suffered for justice and freedom in our land;

Respect those who have worked to build and develop our country; and

Believe that South Africa belongs to all who live in it, united in our diversity.

We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to —

Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;

Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;

Improve the quality of life of all citizens and free the potential of each person; and

Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.

May God protect our people.”